

BLACKS IN NEW JERSEY:

CRIME, DRUGS, JUSTICE &
AFRICAN-AMERICANS

Eleventh Annual Report of The New Jersey Public Policy Research Institute



1991

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The New Jersey Public Policy Research Institute
BLACKS IN NEW JERSEY
Eleventh Annual Report
1991

**Crime, Drugs, Justice &
African-Americans**

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NJPPRI

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Crime, Drugs, Justice & African-Americans

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INTRODUCTION

NJPPRI Mission Statement

The New Jersey Public Policy Research Institute (NJPPRI), established in 1978, is a volunteer, non-profit, tax-exempt organization. NJPPRI is concerned with identifying, analyzing and promulgating public policy issues significantly affecting African American residents of New Jersey. The organization seeks to present these issues for appropriate public discussion and, thereby, to contribute to the development of strategies that address these issues in ways beneficial to New Jersey's African-American population.

NJPPRI is statewide in focus and attempts to work cooperatively with public policy oriented individuals and organizations throughout New Jersey.

NJPPRI

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organization...*

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*...To identify, analyze and promulgate
public policy issues...*

Acknowledgments

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NJPPRI

*...To present issues affecting African-
Americans in New Jersey
for appropriate public discussion...*

Overview*

- Chapter One** **Larry McCormick** *Analyst, Office of Management and Budget, New Jersey Department of Treasury and President, Coalition of Professional Employees (C.O.P.E.)*, presents a statistical profile of adult African Americans in New Jersey's criminal justice system. He also provides comparative characteristics of African American and white families in New Jersey.
- Chapter Two** **Reginald Dorsey** *Policy Analyst, Association for Children of New Jersey* discusses African American youths' involvement in New Jersey's criminal justice system. He describes the various processes available to handle juvenile criminal cases and disparities in the disposition of African American versus white juvenile cases. The author proposes strategies for reducing this disparity.
- Chapter Three** **Thomas Smith, Esq.**, *First Assistant Public Defender for the State of New Jersey*, focuses on the *Comprehensive Drug Reform Act of 1986*, which sought to deter the casual use of drugs by increasing the penalties for drug-related activities. The author also analyzes the relationship between individual county prosecutors' plea bargaining policies and the clear disparities in the treatment of criminal defendants throughout New Jersey.
- Chapter Four** **Hubert Williams**, *President, The Police Foundation*, identifies several causes of criminal behavior and proposes strategies for preventing crime that can be engaged in by the African American community. He challenges government's trend of seeking to address the crime problem by emphasizing punishment rather than prevention and rehabilitation.
- Chapter Five** **Professor Sherie L. Boone** *Director, Family Studies Institute of New Jersey and Professor of Psychology, William Paterson College*, presents the results of his research into the relationship between language skills and violent/aggressive behavior. The author suggests that his findings can be used in developing public policy initiatives aimed at reducing violent crime and reducing recidivism.
- Chapter Six** **Professor Alfred Slocum**, *Rutgers, The State University School of Law, Newark* and former Public Advocate, Public Defender for the State of New Jersey, challenges the legitimacy of New Jersey's bail policy which, he contends, violates fundamental notions of due process and equal protection. The author further charges that the bail policy has a disparate impact on African Americans and Hispanic Americans arrestees.
- Chapter Seven** **Professor Jeanette Covington** *Department of Sociology, Rutgers, The State University of New Jersey* analyzes the so-called "war on drugs." She discusses its potential for success and identifies the costs it extracts from African American communities. The author contrasts approaches to drug problems used in African American versus other communities.

* Affiliations are shown for identification purposes only and are not intended to indicate support or endorsement of the views expressed by the authors.

ARTICLES

Chapter One

Statistical Profile of African-American Involvement in New Jersey's Criminal Justice System, and of the African-American Family in New Jersey

By Larry McCormick

*Analyst, Office of Management and Budget,
New Jersey Department of Treasury and
President, Coalition of Professional Employees
(C.O.P.E.)*

Overview

In September 1990, the U.S. Justice Department reported that the number of State and Federal prisoners increased from 675,425 in June 1989 to a record 755,425 in June 1990—a single year increase of 80,000.¹

In 1980, the United States ranked third in the world (behind the Soviet Union and South Africa) in the number of its citizens behind bars, with a rate of 426 per 100,000 (.43%).

In 1990, the United States ranked number one in the world in the number of its citizens behind bars.

There are 3,109 incarcerated and paroled African-American men for every 100,000 (.312%), a rate that is seven times that of the general population rate.²

This alarming disparity indicates the disproportionate impact that this country's criminal justice system has on African-American males. Professor Norval Morris, a former Dean of the University of Chicago Law School states that "the whole law and order movement that we have heard so much about is—in operation—anti-black and anti-underclass. Not in plan, not in design, not in intent, but in operation."³

The State of New Jersey ranks among the top ten states in the nation in prison population with more than 20,800 prisoners as of June 1990.⁴ In October 1990 that number reportedly jumped to 21,000 adult prisoners or 253 for every 100,000 New Jersey residents (.25%).⁵ In 1980, there were only 80 prisoners per 100,000 residents (.08%)—a 46% increase.⁶

The State's corrections system has been unable to increase its prison facility capacity so as to keep pace with the rate of increase in prisoners. Projections indicate that current prison facilities will be

required to house 7.6% more prisoners than they have room for by January 1992. It will cost \$500 million to build enough cells to hold those prisoners.'

The purpose of this article is to provide a statistical analysis of the disproportionate numbers of African Americans in the New Jersey criminal justice system. It is not intended to provide any explanation for the disparity. The facts contained in this article viewed in conjunction with the discussions in the other articles of this report will not require any further explanation.

African-Americans in the New Jersey Criminal Justice System

There were 443,853 arrests made in the State of New Jersey in 1989. Almost 80% of those arrested were over the age of 18. Table 1 breaks down, by race, total arrests in New Jersey in 1989.

TABLE 1 - TOTAL ARRESTS BY RACE - 1989

RACE	ADULT	JUVENILE	TOTAL
White	215,691	52,839	268,530
Black	135,126	37,662	172,788
Other	1,902	633	2,535
Total	357,719	91,134	443,853

Source: N. J. State Police, 1989 N. J. Uniform Crime Report

The data indicates that approximately two thirds (61.1%) of adult arrests in 1989 were of white adults while just over one third (38.3%) were African-American adults. The ratio for all arrests in 1989 is about the same (60.5% White, 38.8% African American). These figures are in sharp contrast to the racial breakdown of the prison and parolee population.

As of December 31, 1989 there were 15,572 prisoners in New Jersey State prisons^a and 18,902 offenders on parole.^b This does not

include the 4,755 people who were in county jails, halfway houses and reception centers.

Total white arrests as percentage of total arrests	60.5%
White adult arrests as percentage of adult arrests	61.1%
White juvenile arrests as percentage of juvenile arrests	58.0%
Total black arrests as percentage of total arrests	38.9%
Black adult arrests as percentage of adult arrests	38.3%
Black juvenile arrests as percentage of juvenile arrests	41.3%

Table 2 provides a racial breakdown of offenders in state prisons or on parole.

**TABLE 2 - NEW JERSEY PRISONER/PAROLEE POPULATION
RACIAL CHARACTERISTICS - DECEMBER 1989**

RACE	PRISONERS	PAROLEES	TOTAL
Black	9,644	10,566	20,210
White	3,390	5,089	8,479
Other	2,538	3,257	5,795
Total	15,572	18,912	34,484

The disparity between African American arrests and those who make up the prison and parolee population is dramatic. African Americans make up 58.6% of prisoners and parolees, while representing only 38.9% of all arrests. Whites, on the other hand, are only 24.6% of prisoners and parolees, and 60.5% of all arrests. It is important to note that 74% of the juveniles in the system were African American. Of all state prisons in New Jersey there is only one whose

population is not predominately non-white. That prison is the Adult Diagnostic and Treatment Center, which is a facility for sex offenders and is 70% white.

38.9% of total arrests in 1989 were of African-Americans

**58.6% of total prison/parolee population were African-American
(Prison - 62%; Parole - 56%)**

60.5% of total arrests in 1989 were of whites

**24.6% of total prison/parolee population were white
(Prison - 22%; Parole - 27%)**

The disproportionate percentage of African-Americans in the criminal justice system is glaring. These statistics are particularly alarming in light of the declining African-American population in New Jersey. From 1985 to 1987 the African-American population declined by 25% - 248,000 to 199,000 respectively.¹⁰

Further data indicates that those who become a part of the system are caught in a continuum from which few escape and that drugs play a significant role in the cycle.

- the average number of arrests per inmate was 7;
- 75% of the inmates had prior convictions with an average number of convictions of 4.2
- 60% of all prisoners had at least one drug arrest,
- 40% of all prisoners had at least one drug conviction,
- 33% of all prisoners had drug distribution as their most serious charge; and
- 50% of all prisoners had a minimum of one drug possession arrest.¹¹

Even more compelling is the fact that those African-Americans in the system have no hope of "reform" but have only increasing knowledge of how to "survive" within a subculture that is a self

fulfilling prophecy

A look at demographic data will highlight comparative characteristics of the two racial groups

TABLE 3 – COMPARATIVE CHARACTERISTICS OF AFRICAN-AMERICAN AND WHITE FAMILIES FOR 1987

Characteristics of the African American Family in New Jersey

CHARACTERISTICS	AFRICAN-AMERICAN FAMILY	WHITE FAMILY
Number of Families	199,000	1,730,000
Average Size	4.8	3.7
Number of Males	464,902	3,142,720
Single Head of Household	45,173	266,420
Poverty Level	38,000	9,649
Median Income	\$23,223	\$41,421
Unemployment Rate	8.5%	3.4%

Source: N.J. Department of Labor, *Prelude to the 1990 Census*; N.J. Annual Demographic Profile 1980-1988

Table 3 illustrates very significant differences between African-American and white families in New Jersey. The median income of African-Americans was only 56% of that of Whites. More than 19% of all African-American families were living in poverty as compared to 6% of white families. The unemployment rate among African-Americans was 150% higher than it was for whites. The average African-American family size was 30% larger than the average white family and 22.7% of all African-American families in New Jersey were single-parent households. The latter statistic compares to only 15.4% of all white families with single-parent households. Further, one of every ten African-American families has a member in the criminal justice system (in prison or on parole).

The statistics illustrating the gross disparity between the quality of life among African-Americans and that of whites in New Jersey are as dramatic as the data illustrating who is more likely to be caught in the criminal justice system. Not only is it dramatic, but the statistics make it easier to understand the increase in the sale of drugs among young African-American males and the decrease in the number of African-American males completing high school and attending college. The struggle to obtain a job when it is clear that you are

150% more likely to be unemployed than your white competitors, at a minimum disincentive. This is compounded by the fact that the median salary of the white workforce is **78%** more than the median salary of African Americans. There are 30% more mouths to feed per family among African-American than white families and a greater likelihood of a single parent having responsibility for earning an income to feed that family (22.7% Black families with single parent vs 15.4% white families).

- 1 *USA Today*, September 9, 1990, Prison Population at Record Level Notes
- 2 *Camden Courier Post*, January 8, 1991, Build Society not Prisons
- 3 New York State Coalition for Criminal Justice and Correctional Association of New York, September 1990, *Imprisoned Generation*
- 4 *USA Today*, September 9, 1990, Prison Population at Record Level
- 5 *Newark Star Ledger*, October 24, 1990, Bulging Prisons are Seen by '92.
- 6 *ibid*
- 7 *Ibid*
- 8 *Prior Criminal History of State Correctional Inmates - October, 1989*
- 9 N.J. Department of Corrections, September 1990, *Offenders in New Jersey Correctional Institutions as of December 31, 1989 by Selected Characteristics - Annual Report*
- 10 *Prelude to 1990 Census - N.J. Annual Demographic Profile 1980-1988*, a joint study prepared by Rutgers University and the New Jersey State Department of Labor, Division of Labor Market and Demographic Research, March 1990
- 11 N.J. Criminal Disposition Commission Briefing Report, May 1990, *Prior Criminal History of State Correctional Inmates - October 1989*

- References*
- Imprisoned Generation* a report by the Correctional Association of New York and the New York State Coalition for Criminal Justice
- Prelude to the 1990 Census: N.J. Annual Demographic Profile 1980-1988* a joint study prepared by Rutgers University and the New Jersey State Department of Labor Division of Labor Market and Demographic Research March 1990
- Offenders in N.J. Correctional Institutions as of December 31, 1989 by Selected Characteristics*, Annual Report of N.J. Department of Corrections September 1990
- Offenders on Parole in N.J. on December 31, 1989 by Selected Characteristics* N.J. Department of Corrections September 1990
- 1989 New Jersey Uniform Crime Report* New Jersey State Division of State Police. September 1990
- Prior Criminal History of State Correctional Inmates: October 1989* Briefing Report of the N.J. Criminal Disposition Commission May 1990
- Bulging Prison are Seen by '92* Newark Star Ledger October 24 1990
- Bund Society, Not Prisons* William Raspberry Camden Courier Post January 8, 1991

Chapter Two

African-American Youths and the Juvenile Justice System in New Jersey

By Reginald S. Dorsey

*Policy Analyst,
Association for Children of
New Jersey*

The criminal justice system in the United States is expanding in all aspects. Since 1973 the number of prisoners, criminal justice personnel, and taxpayer dollars spent have increased to record highs each year. Between 1973 and 1988, the number of felons in state and federal prisons almost tripled from 204,000 to 603,000.¹ By 1989, the total inmate population in our nation's prisons and jails had passed the one million mark.²

The concern is that this expansion has not been a uniform growth when individual segments of the population are considered. The number of women prisoners has increased in recent years at a more rapid pace than men. The criminal justice system continues to engage disproportionate number of minorities and the poor.

New Jersey's juvenile justice system is no different. Minority children are over represented throughout the system. By 1989, 85% of the juveniles in our state's correctional institutions were minorities.³ The most critical concern is the disproportionate numbers of minorities in secure facilities, and the fact that incarceration rates have increased steadily in recent years.

The disproportionate numbers of African-Americans incarcerated is extremely detrimental to African American males, families and communities.

*The Significance of
Incarceration on the
African-American Community*

The impact of incarceration can be permanently damaging. Repercussions extend beyond the immediate loss of freedom. Although correctional facilities are intended to be rehabilitative, few would claim that the overcrowded system assists offenders to become productive citizens after their release. What is paramount that offenders "pay the debt to society", the stigma of being an ex-offender is often carried throughout life. This reduces the opportunity



for these youths to be accepted into the mainstream of society. In the end, we risk losing an entire generation of productive male citizens.

African American communities obviously suffer when approximately one-quarter of their young men are under the control of the criminal justice system. The period between ages 14 and 18 is a vital time of life, when constructive life skills necessary for starting a career and beginning a family are earned. Many of these youngsters come from single parent families. It, therefore, becomes a vicious cycle as young black men are incarcerated, families increasingly become single parented. Children of these families are, in turn, at risk of delinquency and incarceration.

The juvenile justice system must become a system that promotes rather than weakens, the potential positive contributions young African American males can make to the family, community and society. Until this happens, the stability of these institutions is in jeopardy and becomes increasingly insecure.

The purpose of this article is to focus on the impact of having disproportionate numbers of African-Americans involved in New Jersey's juvenile justice system and the serious consequences of this situation.

New Jersey's Juvenile Justice System

New Jersey's juvenile justice system is complex, involving several laws and responsible agencies at the state, county and local levels.

In 1984, New Jersey completely revised its Code of Juvenile Justice. While the basic goal of rehabilitation was retained, several provisions were revised to toughen the code regarding the way it treats serious or repeat offenders.

The initial stage of the justice system involves the police. The police are often called the 'gatekeepers' of the system since they have the responsibility for determining if a crime has been committed and, if so, if there is cause to believe that the suspect should be arrested. Through the mechanism of a "stationhouse adjustment" police are able to exercise quite a bit of discretion regarding how youngsters in

custody are handled. Statewide in 1986, about 56% of all juveniles taken into custody were referred to court. This percentage varied greatly among the counties, from 27% in Ocean County to 89% in Salem County.

Family Court, also established in 1984, has the responsibility of dealing with delinquent offenses, juvenile/family crisis cases and several other types of non-criminal cases, such as adoptions. Annually, this Court processes over 100,000 juveniles under either its delinquency or juvenile/family crisis jurisdiction.

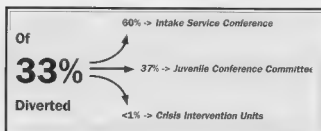
Upon referral to the court, not all cases are heard by a judge. A complaint is reviewed by a court intake worker who recommends whether it should be dismissed, diverted, or referred to court. A case is dismissed when facts are insufficient and there is no probable cause that a delinquent act was committed.

Diversion seeks to bring resolution without formal court procedures and is usually handled by one of the following: *System Diversion*

- **Juvenile Conference Committees (JCC)** are made up of six to nine community volunteers who "hear matters which the presiding judge determines may best be dealt with at the community level by expressing community disapproval of the conduct alleged with the expectation that more flagrant and serious violations of the law will not occur in the future."⁵
- **Intake Service Conferences (ISC)** are utilized in more serious cases and include a representative of the court to meet with the juvenile.
- **Crisis Intervention Units (CIU)** handle juvenile/family crisis cases. These cases, such as running away or truancy, are called status offenses because they are not crimes if committed by persons over 18. CIU's were also created, in 1984, to provide 24 hour on-call responses to "stabilize situations, counsel the juvenile and family and get them involved in community services that are available to handle such cases."⁶

As with any system with rehabilitation goals and large numbers of cases, the juvenile justice system attempts to divert many youths from formal hearings by the court. In 1986, 23,513 cases

involving 21,344 juveniles and 31,450 charges were diverted to one of the three court diversion programs. Comparing these figures to the total number of cases (58,409), juveniles (41,103), and charges (96,049) docketed in 1986 discloses that 40% of the cases, 52% of the juveniles and 33% of the charges were diverted by the court that year. Statewide, a majority (60%) of diverted cases are referred to an Intake Service Conference, 37% to a Juvenile Conference Committee and less than 1% to Crisis Intervention Units.⁷



Disparities in the Juvenile Justice System: The Statistics

The juvenile justice statistics in New Jersey paint a graphic picture of disparity.⁸

How much and what kind of delinquent acts are committed?

- The Uniform Crime Report (UCR) of 1986 indicates that 95,429 juveniles were arrested

White youths accounted for 60,887 (63%) of juvenile arrests

African American youths account for 34,212 (36%) of juvenile arrests

- Twenty-seven percent (25,728) of all juvenile arrests in 1986 were for index (more serious) offenses

White youths accounted for 13,152 (52%) of juvenile arrests for index offenses

African American youths accounted for 12,576 (48%) of juvenile arrests for index offenses

- Of total juvenile arrests, 5% (4,726) of juvenile arrests were for violent index offenses.

White youths accounted for 1,599 (34%) of juvenile arrests for violent index offenses.

African-American youths accounted for 3,127 (66%) of juvenile arrests for violent index offenses.



Juvenile Justice Statistics in New Jersey



36%	Juvenile Arrests	63%
48%	Juvenile Arrests for Index Offenses	52%
66%	Juvenile Arrests for Violent Index Offenses	34%
Source: <i>The Uniform Crime Report, 1986</i>		

Despite these patterns, when delinquency occurs and the juvenile justice system intervenes, the arrest statistics suggest that minority youths are dealt with more harshly than white youths.

In general, minority youths are more likely to be found in publicly operated correctional facilities, such as county detention facilities, state-run training schools and other programs designed for delinquents. The Department of Corrections, Division of Juvenile Services (DJS), had a total population of 745 youths, 131 (17%) were white, and 487 (65%) were African-American.⁹ White youths are generally sent to less restrictive therapeutic services (group homes and residential treatment centers). Data from the 1988 Division of Youth and Family Services (DYFS) Demographic Report indicates that African-American youths comprised 44.7% of group home care, whites

42.9% African Americans represented only 34.6% of juveniles placed in residential care, while 53.2%. According to DJS 1988 statistics, 86% of the juveniles in the state's juvenile correctional facilities are minorities. What justifies these inequities?



Less Restrictive Therapeutic Services



44.7%	Group Home Care	42.9%
34.6%	Residential Care	53.2%
Source: 1988 Division of Youth and Family Services (DYFS) Demographic Report		

The reasons for these disproportionate numbers have been discussed by numerous organizations, committees and commissions. There is no consensus on why African American juveniles are over-represented within the system and there is a tendency to disregard the possibility of prejudicial or discriminatory biases. Regardless of the reason, the inequities are obvious and action needs to be taken.

Disparities in the Juvenile Justice System: The Issues

African American youths account for nearly one half (49%) of juvenile arrests for index offenses and 2/3 (66%) of arrests for violent index offenses. The JDC compared incarceration rates by race of juvenile and by degree of the most serious charge. The findings show that African Americans are still more likely to be incarcerated than are whites. This

DEGREE OFFENSE	Black's Likelihood of Incarceration vs. White's
1st	2.9x
2nd	2.0x
3rd	1.8x
4th	3.4x
5th	1.8x

was true for each degree category. For 1st degree offenses African American juveniles are 2.9 times more likely to be incarcerated than white juveniles. For 2nd, 3rd, 4th degree and disorderly persons offenses African-American juveniles are 2.0, 1.8, 3.4 and 1.8 times, respectively, more likely to be incarcerated than whites.

The JDC also studied the mean number of prior adjudications of delinquency by race of juvenile and by degree of the most serious charges. The findings show that on the whole, incarcerated African American juveniles do not average greater numbers of prior adjudications of delinquency than incarcerated white juveniles. ***"In fact, black juveniles incarcerated for 2nd and 4th degree offenses have fewer average numbers of priors than white juveniles incarcerated for the same degree of offenses."***

Nineteen personal problems, which include drug abuse, alcohol abuse, destructiveness against self, property or others, and learning disabilities, were compiled by the JDC to create a problem index to study juveniles incarcerated in 1986. White juveniles averaged 3.9 personal problems, as opposed to African-Americans who averaged 3.4.

**African-American
Juveniles
3.4 personal problems**

**White Juveniles
3.9 personal problems**

A 14-item juvenile/family problem index was also created which included abuse, sibling or parental adjudication or incarceration, drug and/or alcohol abuse, lack of parental support, and a family history of public assistance dependency for comparison. The results indicated that African American and white incarcerated juveniles both averaged 2.8 family problems.

In an attempt to explain the differences in incarceration rates many other factors were studied such as the use of a weapon, damage to property or injury to person, other pending complaints, source of complaints and the average number of prior residential placements or incarcerations. No significant differences were found.

The only statistically significant difference between incarcerated African American and white juveniles was family make-up. While only 6% of the white juveniles came from single parent families, 35% of the African American juveniles were from single parented households.

The JDC concluded its analysis by saying,

"We conclude from the above analysis that the disproportionate incarceration of minority youth cannot be adequately explained by relevant legal factors (i.e., differences in prior adjudication and seriousness of offenses). Other factors, generally, fail to explain the difference as well. The only exception to these findings is the apparent effect that family make up has on judicial decisions. Our data support a view that when a question of family stability exists the likelihood of incarceration may be greater. The negative impact on minorities, as a result, may be great."¹²

Critical Questions

Why is the percentage of incarcerated African American youth generally so much higher than the percentage of those arrested? This is not a question that is easily answered, as evidenced by the many publications addressing the over-representation of minorities in the juvenile justice system. To approach an answer to this question, other questions must be addressed:

- 1) To what extent does family structure contribute to this disparity?
- 2) To what extent does the lack of non-correctional, interventive services/programs contribute to the disparity?
- 3) To what extent does the system and its actors, through discretionary decisions, contribute to the disparity?

Family Structure and Economic Status

The structure of the family has long been debated as having direct impact on the propensity of youth to commit delinquent acts. New configurations of the family are prevalent in New Jersey, as well as the rest of the nation. Nowhere is the variation on family structure more evident than in the African-American community. The total percentage of all children living in single-parent families in 1985 was 21%. At that time, more than 52% of African American children lived in single-parent families.¹³ These are often young

CHILDREN IN SINGLE-PARENT FAMILIES IN 1985	
% ALL FAMILIES	% AFRICAN- AMERICAN FAMILIES
21%	52%

families whose head of the household is under 30 years of age

Single parent families are more likely to live in poverty. Minority families have borne most of the increase in the rate of poverty and continue to become poorer.¹⁴ In 1982, the rate of poverty for African American families was 21 percent. Almost 1/3 of African American children grow up in poverty. Together with Hispanics, minority youth represent more than half of all New Jersey's impoverished children.¹⁵ In female-headed households, more than 2/3 (70%) of African American families were living below the poverty level in

1982
Poverty rate for
African-Americans
21%

1986
Female-headed
households of African -
American families
below poverty level
70%

1986.¹⁶ Many families lack sufficient income and jobs to meet the basic survival needs. A recent report to New Jersey's Commissioner of Human Services on the Standard of Need for welfare grants indicated that welfare payments cover only half the cost of the bare necessities of life for 350,000 women and children in AFDC. In addition, the working poor also have substantial difficulties meeting basic needs.

An attempt to remove oneself from a lifetime of poverty is extremely difficult. More often than not, females that head households are high school dropouts (85% in 1986) and of those who had graduated, 60% were poor.¹⁷ According to the Department of Labor, in 1988 the unemployment rate for whites aged 16 to 19 years was 8.2%, for African-Americans 16 to 19 years of age the rate was 21.7%. Many who have jobs can be classified as the "working poor" who just barely meet their minimal survival needs, if at all.

UNEMPLOYMENT RATE
In 1988

WHITES
16-19
Years Old

AFRICAN-
AMERICANS
16-19
Years Old

8.2%

21.7%

Source. Dept. of Labor

A related issue is the large number of African American children growing up in substitute care arrangements such as foster care or group homes. According to a Division of Youth and Family Services (DYFS) report of June 1990, there are presently 53,026

children under DYFS supervision. Seventeen percent (9,003), are in substitute care. Of these 9,003, 70.2% are in foster care. When these numbers are broken down by race, 5,481 (60.9% of all children in substitute care) are African-American and 2,312 (25.7%) are white. African-Americans represent 65.3% (4,127) and whites 21.5% (1,357) of the children in foster care. Foster homes are in short supply for those children who must be temporarily placed out of their natural homes. The shortage of homes is especially significant for African-Americans, Hispanics and special needs children.

"The shortage of homes does result, at times, in the unnecessary institutionalization of children at great cost to the public. According to DYFS staff, detention centers and correctional settings have been used for children when an appropriate foster home could not be found."¹⁸

As a result of such stress and hardship, African-American youths are increasingly at risk of delinquent involvement. Statistics show that African-American youths of single-parent households make up 35% of African-American youths incarcerated.¹⁹ Judges, when ordering disposition, may base their decisions on the family's ability to support, discipline and play an active role in a child's rehabilitation. In a sense, the child is being punished for the dysfunctioning of his family. As stated in the 1989 *Judicial Conference Report of the Committee on Delinquency, Causes and Prevention*: "If there is not a family—a unit of persons that could accept and carry out the responsibility of protecting, disciplining and nurturing children—that the court can look to in order to implement a disposition mode that requires family participation and responsibility, the child in the juvenile justice system is the one to feel the impact of this lack of a functional family."

African-American youths of single-parent households are 35% of African-American youths incarcerated

Access to Early Preventive Services

Society has failed to effectively address the special needs of African-American youngsters to prevent their involvement in the juvenile justice system. The appropriate time to target these special needs is long before a youth enters the juvenile justice system.

Problems for African-American youth do not start when they become involved with the juvenile justice or correctional system.

These youth are at risk early in life. Yet when we look at early childhood education, public schools (K-12), and special services offered at risk children by the state, it is evident that minority children are not receiving the same quantity and quality of services as white children.

The High/Scope Foundation's Perry Preschool Project studied the effects of early childhood education on children from low-income families. The study followed disadvantaged children from the age of 3 to 19. The experimental group of children received a high-quality program of center-based preschool education and weekly home visits to mothers and children. The control group received no early childhood program. The results showed strong evidence that preschool education pays off for children in higher academic performance, lower dropout rates, better earnings and lower delinquency rates.

Head Start

In summary, though this was a population at significant risk of involvement with police and the court system, early education reduced the extent of this involvement.

The proportion of offenders in the preschool group was 31%, 1 out of 3, whereas the proportion of offenders in the no-preschool group was 51%, 1 out of 2. Chronic offenders, defined as persons with five or more offenses, comprised 17% of the no-preschool group, but only 7% of the preschool group. The overall number of arrests was only half as great in the preschool group.²⁰

However, today in New Jersey less than 20% of all eligible disadvantaged children are receiving high quality preschool services through the Head Start program. At the same time, preschool programs are the fastest growing segment of public schools in middle and upper class communities.

It is obvious that Head Start or other early intervention programs are not the sole solutions to disparity. Nor are they substitutes for stable families. Yet, this study demonstrates the role that support and early intervention can play in helping to ensure positive youth outcomes. Other studies have addressed the high correlation of school dropouts and involvement in the juvenile justice system. If nothing else, early attention and intervention can increase the possibility that a child finishes school and is able to become competitive in the job market or seek higher education.

Public Education

New Jersey's education system also falls short of meeting the needs of African American youths. According to the New Jersey Department of Education (DOE), public school dropout rates for white youths are declining, yet for minorities they are increasing. For the 1980-81 school year, 12,258 whites, and 5,328 African Americans dropped out of school. By the 1987-88 school year, the number of white dropouts had declined to 8,976 but the number of African American dropouts increased to 6,134.²¹

	NUMBER OF SCHOOL DROPOUTS	
	WHITES	AFRICAN-AMERICAN
1980-81	12,258	5,328
1987-88	8,976	6,134

African-American children are also disproportionately suspended by public schools. Although they represent just 18% of the statewide population, African American children constituted 29% of all students suspended. Data reported in testimony by the Department of the Public Advocate also stated that African American children are far more likely than white children to receive the most stigmatizing special-education classifications.²²

Most recently, the Supreme Court, in *Abbott v. Burke*, found that the current school aid formula does not sufficiently fund poorer urban school districts where there are high concentrations of minority children. Thus, the Quality Education Act of 1990 (QEA), was passed with the intent of reducing disparities in per pupil spending between poor and wealthy school districts in the state. Prior to the Supreme Court's decision and enactment of the QEA, youth in school districts receiving less aid per pupil were not afforded the same educational opportunities as suburban district pupils. Such a system maintains urban youths within the perpetual cycle of poverty. The lack of education leads to unemployment or a minimum wage job, insufficient resources decrease the possibility of meeting basic needs, and this can often lead youth to delinquent acts.

Service for Children at Risk

According to the New Jersey Governor's Committee on Children's Services Planning "... race, culture and social class influence how children are served by the human services system." Specifically Blacks and Hispanics do not receive equal access to

services. At the crudest level, this means that two children who exhibit the same behavior end up in different systems. The majority, advantaged children served by mental health agencies. The minority, disadvantaged child is committed to the Department of Corrections, Division of Juvenile Services. This differential treatment plays out in many more subtle ways in the human services system.¹⁴

There has also been a great deal of debate as to whether the divisions within the Department of Human Services, Division for Developmental Disabilities (DDD), Division of Mental Health and Hospitals (DMH&H) and Division of Youth and Family Services (DYFS) accept their share of responsibility for court-involved youth. Many of the youths served by the Division of Juvenile Services face the same problems as youths legally mandated to be served by these divisions. Juveniles must have access to the services that address their needs.

African-American youth with serious mental health needs have less access to services offered by the Division of Mental Health and Hospitals (DMH&H). Data from the 1985 DMH&H Bureau of Research show a total of 13,535 children, ages 5-17, were admitted to DMH&H contracted agencies. Of these children, 1,398 (10.3%), were African-American, as opposed to 8,982 (66.4%) white children (51.7). Likewise, of the 454 children admitted to mental health hospitals in 1985, 298 (65.6%) were white and 120 (26.4%) were African-American.

Residential treatment center placements are viewed generally as a less stigmatizing and more rehabilitative option than incarceration in a large correctional institution. Statistics show that of the 1,129 children who are in residential care under DYFS supervision, white youths represent 46.9% (529) and African-American youths represent 40.4% (456).

These numbers, when taken together with the large numbers of African-American youngsters incarcerated in correctional programs, indicate that African-American youths are not placed in non-correctional services to the same extent as white youths. They are placed to a greater extent in correctional placements.

To address the issue of disproportionate numbers of African-American youths in the juvenile justice system and not consider the existence of racial bias would be shortsighted and incomplete.

*Conclusion: Does
Discrimination Play a Role?*

Whether racial biases are intentional or not, the disproportion

ate numbers of minorities in the system undeniably indicate that there is "some correlation between race and juvenile justice system involvement",²⁵ Again, there are many critical points in the system where discretionary decisions impact on the outcomes for African-Americans within the system. The need for cultural sensitivity, as well as representation by the African-American community in decision-making positions within the system cannot be overemphasized.

It is very likely that some of the disparity can be attributed to the discretionary decisions that are based on traditional definitions (e.g. "family") rather than definitions which are sensitive to cultural variations. Once involvement in the juvenile justice system has occurred there are many key points in the process where discretionary decisions are made. The police make the initial decision that determines whether a juvenile will penetrate the system further.

When juvenile cases are referred to court, the youth faces another juncture in the system at which discretion will be used to determine further system involvement. Generally, court intake decides whether or not a juvenile would be better served outside the formal court system. Specifically, court intake is responsible for reviewing referrals and deciding whether cases should be dismissed, diverted or referred to court. Finally, cases that are not diverted require a hearing in the courtroom where the judge has an important decision to make. The judge's decision, called a disposition (which is similar to a sentence in adult court) determines the direction of rehabilitation for the juvenile.

The fact remains that throughout the juvenile justice system, decisions about the future of youth are at the discretion of numerous individuals. The fact that these persons have studied and trained to make these decisions is not overlooked, but the reality that biases can affect individual decision making is inevitable. Furthermore, system actors undeniably become jaded by the habitual day to day processing of large numbers of African-American children and families through the family courts. Their individual biases are reinforced. This is not to say that individual case determination and system discretion has not helped African-American youths in particular cases or that it should be abandoned. It is simply an area that should be examined for improvement.

The inadequacies of the juvenile justice system must be addressed through a multi-factor approach. Efforts would be maximized by simultaneously developing programs and services of support to prevent youths from entering the system, as well as a permanent early

intervention programs to keep those who are involved in the system from penetrating to more serious levels. Increasing the availability of programs that nurture the potential of the youngest children — like Head Start — is essential. In addition, welfare reform efforts that afford families enough to live on and viable routes to financial independence are key.

If a young person does enter the system, the safeguards should be in place to ensure that he does not get trapped. The Society has a responsibility to provide appropriate, alternative rehabilitation programs so that needs can be met, as opposed to opting only for restrictive settings. Further, it is crucial for the human services system to be culturally sensitive to the needs of African American youths and minorities. It is also necessary for our community to be represented within the system and in positions of authority.

Finally, we as an African American community have a responsibility to allow our children the opportunity to become productive, competitive citizens. It is especially time for the African American man to be accountable for his responsibilities to his children, family and community.

- Notes
- 1 *Young Black Men and the Criminal Justice System. A Growing National Problem*, Marc Majer, Assistant Director, The Sentencing Project, February, 1990, page 1
 - 2 *Ibid*, p. 1
 - 3 *Minority Incarceration*, JDC Clearinghouse, The Juvenile Delinquency Commission, April 7, 1989
 - 4 *Juvenile Justice - Toward Completing The Unfinished Agenda*, The Annual Report of the Juvenile Delinquency Commission, 1988, page 17
 - 5 *ibid*, p. 25
 - 6 *ibid*, p. 20.
 - 7 *Ibid*, p. 26
 - 8 *Ibid*, p. 3
 - 9 *The Disproportionate Incarceration of Black and Hispanic Youth in New Jersey*, Report of the Governor's Juvenile Justice and Delinquency Prevention Advisory Committee and its Ad Hoc Subcommittee on Minority Issues, State Law Enforcement Planning Agency, March 1, 1990, page 1
 - 10 *Ibid*, p. 4.
 - 11 *Juvenile Justice - Toward Completing The Unfinished Agenda*, The Annual Report of the Juvenile Delinquency Commission 1988, page 54
 - 12 *Ibid*, p. 55
 - 13 *1989 Judicial Conference. Juveniles, Justice and the Courts, Report of the Committee on Delinquency Causes and Prevention*, October 23, 1989, page 20.
 - 14 *A Call to Action, Linking Policy With Need*, New Jersey Commission on Children's Services, 1982, page 33
 - 15 *Ibid*
 - 16 *1989 Judicial Conference. Juveniles, Justice and the Courts. Report on the Committee on Delinquency Causes and Prevention*, October 23, 1989, page 31.

- 17 Ibid, p 31
- 18 *A Call To Action, Linking Policy With Need*, New Jersey Commission on Children's Services, 1982, page 97
- 19 *Juvenile Justice Toward Completing The Unfinished Agenda*, The Annual Report of the Juvenile Delinquency Commission, 1988, pages 54, 55
- 20 *Changed Lives, The Effects of the Perry Preschool Program on Youths Through Age 19*, Monographs of the High/Scope Educational Research Foundation, Number Eight, 1984, page 66
- 21 *The Disproportionate Incarceration of Black and Hispanic Youth in New Jersey* Report of the Governor's Juvenile Justice and Delinquency Prevention Advisory Committee and its Ad Hoc Subcommittee on Minority Issues, State Law Enforcement Planning Agency, March 1, 1990 page 4
- 22 *A Call to Action, Linking Policy With Need*, New Jersey Commission on Children's Services, 1982 page 34
- 23 *Past Due Final Report of The Mental Health Forum - 1987* New Jersey Governor's Committee on Children's Services Planning, page 7
- 24 Ibid, p 1
- 25 *The Disproportionate Incarceration of Black and Hispanic Youth in New Jersey*, Report of the Governor's Juvenile Justice and Delinquency Prevention Advisory Committee and its Ad Hoc Subcommittee on Minority Issues, State Law Enforcement Planning Agency March 1, 1990, page 15

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Chapter Three

The Comprehensive Drug Reform Act, Plea Bargaining, and the Exercise of Prosecutorial Discretion

By Thomas Smith

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One of the most often used words in the criminal justice system for the last five years has been "drugs." New Jersey, like many other states, has been faced with a problem of increased drug use on the part of its citizens. This increased drug use can be seen throughout the entire fabric of life in New Jersey. More and more of its young people were involved with drugs. Increased demands were placed upon an already overburdened health care system. The AIDS epidemic, which has had a particular devastating impact on New Jersey, can trace a large part of its spread to the use of drugs. An increased number of babies are born drug addicted. Drug abuse was undermining the family structure and leading to increased incidents of abuse. Clearly, politicians and members of the executive branch in New Jersey needed to respond.

Both the legislative and executive branches reacted. Central to this response was the passage by the Legislature of the Comprehensive Drug Reform Act of 1986 (CDRA). The foundation of this new law was the imposition of criminal sanctions on all those involved with drugs: users, sellers and manufacturers. This was a fundamental policy change from its predecessor law which was viewed by many in the legislature and law enforcement as not being tough enough. The legislature, in the CDRA, intended as one of its goals the deterrence of the casual use of drugs. Toughening up the law would serve as beacon to those potential drug abusers to not even try because they may end up in jail or endure some other unpleasant and embarrassing sanction.

Comprehensive Drug Reform Act

Another component of this response was the adoption by the New Jersey Department of Law & Public Safety of its "Comprehensive Blueprint for the Enforcement of Drug Laws in New Jersey." Following the lead from the underlying policies of the CDRA, the "Blueprint",

among other things, places emphasis on deterrence by increasing the emphasis on the arrest of users, in addition to sellers and manufacturers. This policy has come to be known as "zero tolerance." Clearly, under the CDRA, casual users would be exposed to increased sanctions including the loss of driving privileges, thereby justifying increased law enforcement activity.

Essential to the CDRA is its sentencing provisions. The old drug law, which was adopted in 1970, was designed to give judges wide latitude in the sentencing of drug offenders. Sentences in that law ranged from no sanctions to life imprisonment. The New Jersey Supreme Court in *State v. Staten*, 62 N.J. 435 (1973), observed that it was the intent of the Legislature to give the sentencing judges greater flexibility to tailor the sentence to the circumstances of the individual. Primary discretion as to the end result clearly rested with the sentencing judge.

The CDRA represents a fundamental change in this sentencing philosophy. The CDRA focuses on the nature and circumstances of the offense rather than the individual. This change in the treatment of drug offenders has its roots in the New Jersey Penal Code which was revised and adopted in 1979. The revised criminal code, again, in a fundamental change in philosophy when it comes to sentencing non-drug offenders, placed emphasis on the nature of the offense rather than the individual. "In enacting the new Code, the Legislature has for the first time addressed directly the problem of sentence disparity. The Code not only identifies the permissible aims of punishment, but also establishes a general framework to guide judicial discretion in imposing sentences." *State v. McMaquire*, 84 N.J. 508, 532 (1980). "The channeling of that discretion was premised upon the new sentencing philosophy of the Code, which was offense-oriented and did not focus on rehabilitation of offenders." *State v. Hodge*, 95 N.J. 369, 375. The new Penal Code adopted a system of determinate sentencing where the emphasis is placed on deterrence.

The Legislature, when it enacted the CDRA, followed this legislative philosophy and declared:

By enactment of the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq., the Legislature recognized the need for the comprehensive reevaluation, revision, consolidation and codification of our criminal laws and the need to ensure a uniform, consistent and predictable system for the sentencing of convicted offenders focusing principally on the seri-

ousness and degree of dangerousness inherent in a particular offense In enacting the sentencing provisions of the penal code, the Legislature recognized that the imposition of a uniform, consistent and predictable sentence for a given offense is an essential prerequisite to any rational deterrent scheme designed ultimately to reduce the incidence of crime (Emphasis Added, **N.J.S.A. 2C 35-1.1a**).

One of the criticisms made by many who must operate within the criminal justice system is the lack of coordination between the policy developers of the Legislature and the ability of those operating the system to respond to changes in policy.

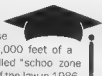
A combination of the CDRA and the enforcement policies adopted in the Department of Law & Public Safety has placed tremendous pressure on an already overburdened criminal justice system. Drug arrests have increased by over 40% during the past two years. This increase in arrests has resulted in the filing of an additional 25,000 indictable complaints in the courts system. *Report of the Special Committee to Assess Criminal Division Needs, New Jersey Administrative Office of the Courts, 1990*.

Needless to say, the courts cannot hope to handle the increased workload without the use of plea bargaining. Plea bargaining is necessary and "has become firmly institutionalized in the state as a legitimate, respectable and programmatic tool in the efficient and fair administration of criminal justice." *State v. Taylor*, 50 N.J. 353, 360, 1979. The New Jersey Supreme Court went on to say that plea bargaining is a "needed response to an ever burgeoning caseload." *State v. Taylor*, supra. An interesting difference of opinion has developed over the CDRA and plea bargaining. On one side are those who argue that the CDRA places too much sentencing authority in the hands of prosecutors and thereby has a negative impact on the efficient administration of criminal justice because it has been a contributing factor in the backlog of criminal cases. *New Jersey (Report of the Adjudication Committee, 1990 New Jersey Judicial Conference Task Force On Drugs and the Courts)*. On the other side are those who argue that the sentencing and plea bargaining provisions are not a contributor to the backlog of cases and the prosecutors are exercising the type of discretion specifically given them by the Legislature (*A Law Enforcement Response to Certain Criticisms of the Comprehensive Drug Reform Act, Department of Law & Public Safety, 1990*).

Plea Bargaining

One of the central provisions of CDRA is the applicability of mandatory minimal terms for certain drug offenses. Under these sentencing provisions, the sentence specifies the time when a sentenced defendant will be eligible for parole.

One of the most controversial sentencing provisions of CDRA is the applicability of these mandatory minimal terms to those convicted of certain drug offenses within 1,000 feet of a school. (See N.J.S.A. 2C:35-7.) These so-called "school zone cases" have increased since the enactment of the law in 1986. In some municipalities, a large percentage of the city is within a 1,000 feet of a school.



Prosecutor's Discretion

All mandatory minimal sentences are subject to waiver by the County Prosecutor pursuant to N.J.S.A. 2C:35-12 1(f). The Prosecutor, therefore, has the authority to make a plea bargaining offer that would be more conducive to a defendant's acceptance by exercising this discretion to waive or reduce the mandatory minimal sentence. The exercising of this discretion has produced wide disparities in the handling of these cases depending upon the practices of individual County Prosecutors. "In some counties all sales within the school zone are indicted, in others there seems to be a required nexus to the school, i.e. sale to school children or sale during school hours. In some counties, prosecutors, once the case is indicted, generally require two year parole stipulations in bargaining, in others, they are willing to bargain for a significantly lesser amount of time in the typical case." (*A Report of the Adjudication Committee, Task Force on Drugs and the Courts, 1990 Judicial Conference Administrative Office of the Courts 1990*) The prosecutor is the keeper of the gate and exercises discretion as to the nature and number of defendants he is willing to offer a plea bargain which doesn't include a mandatory minimal term. Oftentimes the exercise of this discretion is directly tied to public pressure. It is interesting to observe that the Legislature removed much of this type of discretion from the court and placed it with the prosecutor believing that such a shift would lead to more uniform enforcement of the drug laws. Clearly that has not taken place.

The impact of individual county prosecutors' plea bargaining practices on the movement of cases was recognized in the spring and summer of 1989. During that period the Administrative Office of the Courts, the Department of Law and Public Safety, certain County Prosecutors' Offices and the New Jersey Office of the Public Defender

embarked upon a backlog reduction program to reduce the number of drug cases awaiting disposition in several counties. Central to the success or failure of this program was the encouragement of viable plea bargain offers in a majority of these cases. In one particular county, the prosecutor had a policy where anyone arrested for committing a drug offense within 1,000 feet of a school was offered a plea bargain that included a three-year mandatory minimum sentence. This plea policy led to a backlog of these types of cases. Defendants were reluctant to accept the plea offer when it included a mandatory minimal sentence. During this program, the county prosecutor changed his policy and offered plea bargains waiving mandatory minimal provisions. Once this was done, an increased number of defendants accepted plea offers and the backlog was greatly reduced. The experience in this matter clearly points to the nexus between a county prosecutor's plea policies and the movement of cases.

In an effort to resolve the prosecutor plea bargaining disparity issue, the Department of Law and Public Safety is exploring the possibility of developing plea bargaining guidelines for use by the county prosecutor's office. These guidelines would represent a giant step towards standardizing plea offers statewide and alleviate situations where similar defendants charged with the same offenses are treated differently depending upon the county in which they are charged. A uniform plea bargaining policy, especially when it comes to the handling of drug cases where a defendant is exposed to a possible mandatory minimal sentence, would be a positive development towards a more efficient and fair criminal justice system. The New Jersey Supreme Court Task Force on Speedy Trial recognized in 1986 the significant control exercised by the prosecutor when it adopted the following standard which stated in part:

Guidelines

" a proper consideration for the prosecutor in exercising the screening and charging discretion is the effect that his screening policies have on the operation of the judicial process and the ability of the process to handle more serious cases " Standard 13.1 of the report of the Supreme Court Task Force on Speedy Trial, New Jersey Administrative Office of the Courts, 1986

Conclusion

The adoption of a standardized plea bargaining policy by the county prosecutors in conjunction with the Attorney General should not be viewed as a substitute for the exercise of judicial discretion. Although the Legislature has adopted a policy which limits judicial discretion in sentencing, it didn't remove it. The courts must have the discretion to tailor a sentence to fit both the severity of the crime and the individual. The best way to achieve this is the reasonable balancing of the authority of the prosecutor to charge an individual with the power of the court to fix the sentence. A system recognizing this balance is the best way to achieve a fair and efficient criminal justice system.

Disparity of treatment has no place in our criminal justice system no matter how tough we wish to get with drug criminals.

Chapter Four

Building Against Crime: Prevention and the African-American Community

By Hubert Williams

*President,
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Crime is having a devastating effect on the African American community. Statistics released by governmental and private agencies portend a grim future for African-Americans and for U.S. society at large unless we take well-considered, intelligent steps to stem the tide of social destruction. It is of vital importance that African American communities take the initiative in analyzing what is needed to heal themselves. Governmental policies have been too narrow to address the complex problem of crime. They have overemphasized the enforcement option to the detriment of prevention and rehabilitation. As a result, prisons are overcrowded. Yet no real impact has been made on crime. What is needed is a balanced formula, one that seeks to prevent crime and deter criminality and employs enforcement primarily to deal with acute criminal behavior. The political ideology of "just deserts" is purely punitive and does little, if anything, to abate the overall crime problem. The causes of criminal behavior must be looked at, and with these in mind steps must be taken to protect this country's most precious resource, its youth.

Introduction

The problem of crime control is most frequently viewed as the purview of the criminal justice system. When the family and the educational system fail, society shifts the entire burden created by this failure onto the criminal justice system, thus ensuring the problem will not get resolved. If the problem of preventing crime is to be tackled with any hope of succeeding, many social institutions besides those dealing specifically with criminal justice must be involved. Health and educational institutions must be mobilized, community building must be encouraged. People must be empowered to live better lives.

Crime affects the African-American community most particularly and, within this community, takes a devastating toll on youth through deaths that should be preventable.

The Problem

- According to the Census Bureau, African-Americans make up 12.2 percent of the U.S. population, yet the FBI reports that in 1989, out of 18,954 murder victims in the United States, 9,314—almost 50 percent—were black. Ninety-four percent of these black homicide victims were slain by black perpetrators (Federal Bureau of Investigations, 1989, p. 10).
- Homicide is the leading cause of death for blacks, both male and female, between the ages of 15 and 34. A recent study conducted by the Centers for Disease Control's Division of Injury Control found that in 1987, homicide accounted for 42 percent of deaths among black males between the ages of 15 and 24 (Centers for Disease Control, 1990, p. 869).
- According to the federal National Center for Health Statistics, which studied mortality data for 1988, the life expectancy for African-Americans dropped again that year, continuing a worsening trend that began in 1984, and further widening the gap that exists between life expectancy for African-Americans and life expectancy for whites (National Center for Health Statistics, 1990, p. 1). Negatively affecting blacks' life expectancy were increases in the number of deaths due to homicide, motor vehicle accidents, and AIDS.

The Enforcement Strategy

In order to keep crime at a minimum, potential offenders must be deterred from committing crimes. Otherwise, the offender population will continue to increase and the incidence of crime will skyrocket. In the United States, the criminal justice system is the primary vehicle through which society addresses this problem. Heavy reliance on the enforcement approach has overburdened the system and created a pressing need to expand its capacity. This approach carries with it a large price tag. For example, in 1985, state and local governments in the United States spent more than \$12.32 billion on corrections (Bureau of Justice Statistics, 1989). Yet, the effect on actual crime of the present enforcement strategy has been insignificant.

It has had an impact on African-Americans disproportionate to our numbers in the population.

- FBI statistics show that 30.8 percent of persons arrested in 1989 were black (FBI, 1989, p. 190)
- Marc Maurer of the Sentencing Project, a national, non-profit organization, calculates that, on any given day, 23 percent—almost one in four—of black men between the ages of 20 and 29 are under control of the criminal justice system; that is, "either in prison, jail, on probation, or parole..." (Sentencing Project, 1990, p. 3). Only 6.2 percent of white men in that age group were similarly circumstanced.

Emphasis on enforcement is misplaced. A study published in 1990 by the RAND Corporation (Reuter et al., 1990) looked at young men in Washington, D.C. who have been apprehended for some criminal offense. The researchers found that although young men overestimate the danger of getting killed or seriously injured while engaging in the drug trade, they are nonetheless undeterred. They are also well aware of the threat of arrest, but where the more grievous consequence of death fails to deter criminal activity, so also does the threat of arrest.

Sanctions are imposed whether or not they will prove effective in controlling the level of crime. Our society has moved away from its past ideal of rehabilitating criminals, which it now sees as unworkable, and has instead shifted its focus toward simply getting criminals off the street. One result of this shift is that prison sentences are, more and more, designed to be merely punitive. This get-tough approach may satisfy political or ideological interests because it suggests that we are being hard on crime, but it cannot succeed because of its narrow focus and its exclusive concern with symptoms rather than causes. Our political pronouncements, legislative actions, and the focus of the media on arrests and prosecutions create a false sense that the crime problem is being addressed as effectively as possible. The public remains unaware that the course being taken to address the crime problem is neither the only nor the best that can be taken; in the meantime



conditions worsen

Fear of crime has driven Americans to the brink of relinquishing important civil liberties that are fundamental to our democratic form of government. If we are not careful, this erosion of liberties will create rigid class distinctions predicated on wealth and race. Disparities in punishment for the rich and poor are evident in differential mandatory sentences prescribed for those who are convicted of possessing crack cocaine, the form most frequently used by the poor because of its lower cost, and those convicted of using the more expensive powder cocaine, or cocaine hydrochloride, a drug employed by the affluent. A Minnesota state law provides that first-time users of crack be sentenced to four years in prison but that first-time users of powder cocaine receive only probation. A county judge found that the law discriminated against blacks, who in Minnesota are the most frequent users of crack cocaine. Powder cocaine is most frequently consumed by whites. More alarmingly, a similar disparity was enshrined by Congress in Title I of the Anti-Drug Abuse Act of 1986 (subtitled Narcotics Penalties and Enforcement Act of 1986), which set mandatory minimum five-year sentences and ten-year sentences for possession of amounts of crack cocaine that are 1 percent of the amounts of cocaine hydrochloride for which five-year sentences or ten-year sentences are mandated. It is not the case that an ounce of crack cocaine is one hundred times more powerful than an ounce of cocaine powder. At the time the Act was passed, however, there was a lot of public alarm about inner-city use of crack and the violence that became associated with a changed drug market. The United States Sentencing Commission's *Guidelines Manual* follows the legislation in setting the sentencing level for each drug-related crime. In part because of the Congressional-mandated sentences, a person with a previously clean criminal record who is convicted of possession of 5 grams of crack cocaine with a street value of \$400 will get a sentence of 63 to 78 months, while a white-collar criminal who runs an investment service and steals \$74,000 from a retirement account will, under the guidelines, get 6 to 12 months in prison.

If we are not careful about how we deal with the problem of crime, we will imperil our democratic system of government by making the benefits of citizenship not the innate right of individuals but rather dependent upon economic status and ethnicity. Our reliance on channeling people through intrusive systems such as welfare and criminal justice is having a detrimental effect on the right to privacy of all of us, but its impact is especially onerous on the poor. The case management systems imposed by government assistance programs

on those who come under their purview leave clients with very little adult choice or power, not only about what programs they may participate in but also what information they must surrender. We keep records on the poor about the income they derive from employment and from public assistance, how much money they keep in the bank, what rent they pay, what arrests they have had, what drug treatment they received, what convictions they have, how much time they have spent in jail. Those who are supported by public assistance are labeled as unable to care for themselves or irresponsible and some recipients come to believe this about themselves. Those who are incarcerated at a young age incorporate into their self-concept the label "delinquent". Because of the detailed information kept on individuals, those with criminal records are locked out of the employment market at an early age. Thus we encourage them to continue to operate within the criminal underclass.

The current shortsighted approach to crime ignores the environmental factors that shape and form the values and perspectives of potential criminals. It is time for prevention to be revisited. Perhaps one reason why governments have shied away from attempting prevention is that the roots of criminal behavior are complex. There is no one single cause that can be attacked with a magic bullet. Prevention requires patience and long-range thinking and that does not generate flashy press coverage or satisfy demands from constituency interests that something be done right away.

Need to Focus on the Causes of Crime

In exploring the causes of criminal behavior, we must look at the basic kernel of what, from those crucial first years of life, makes a human being what he is. Most delinquents have a very poor self-image. It is known that children develop in accordance with the self-image that is projected onto them by adults. If a child is repeatedly told that he is no good and stupid, he will behave accordingly. He will develop a personality that is bent on destruction, either of self — through alcohol or drugs, for example — or of others through violence.

Some sociologists, proponents of the containment theory of delinquency, have expanded on this model. For example, Walter Reckless (1967, 1956). Reckless argued that youths encounter pressures toward criminality both from within (frustration, anger) and from the environment (poverty or trouble-prone companions, for instance). Yet certain factors will keep a young person from succumbing to these pressures. These include family values, discipline, and community expectations, but the most important is a positive self-

concept

Winston Churchill once said, "We mold our buildings, and then our buildings mold us." The values of youths are to a large degree the product of the vision and circumstances of the adults who mold them. Adults discouraged by their lack of access to the means of attaining the goals respected by the culture, may develop value systems that inhibit their and their children's success in society. Young people who participate in criminal behavior frequently have not been brought up to value personal accountability, respect for authority, deferred gratification, and success through hard work, characteristics necessary for academic achievement as well as success in legitimate spheres of work.

Youth at Risk

We are creating people who will be destructive of our society if we look at the effects of our crime-filled environment on the very young, we can project the future. What we see is frightening. We are dooming the generations that are our future and therefore our hope. The President's Office of National Drug Control Policy estimates that 325,000 drug-exposed babies are born each year. 100,000 of them exposed to crack. The March of Dimes Foundation projects that in the United States there will be between 500,000 and 4 million crack-exposed children by the year 2000. There has been a nationwide increase of 29 percent in the foster care population in the last three years. In New York City, 400 boarder babies are born each month, over 85 percent drug exposed. The percentage of black women in the United States getting pre-natal care declined from 62.7 percent in 1980 to 61.1 percent in 1988, according to the March of Dimes.

Murder is the second leading cause of death for black children aged one to four (Bell & Jenkins, 1990 p. 149). The majority of these homicides are the result of family violence. Families under severe stress, especially when the parent or parents feel isolated, are the most prone to violence. The incidence of adolescent girls, barely out of childhood themselves, having children continues to be a problem. They acquire the responsibility of providing for a family before they are even able to support themselves. They drop out of high school, and thus limit their new family's income potential. What is more serious than that, they find themselves in an unfamiliar, extremely stressful situation. Many lack basic parenting skills. Children of mothers who are unavailable, withdrawn, or unstimulating begin their lives not only at greater risk of physical accident but also with the emotional and intellectual development jeopardized in some cities such as Washing-

ton, D.C., health care agencies whose clients are the very poor have started home visit programs in which nurses weigh and otherwise monitor the progress of newborns and give young mothers tips on how to provide better care for their babies. One aim of these programs is to prevent violence against the children. They show new mothers, for example, how to cope when their babies cry.

Children are deeply affected by violent treatment, even when the violence is moderate. Carl C. Bell and Esther J. Jenkins of the Community Mental Health Council in Chicago looked at some effects of violence on black children in that city (*Bell & Jenkins, 1990*). They found that children who were spanked or whose parents fought with each other were themselves more frequently involved in fights than those from less violent homes.

The violence that surrounds children in many crime-ridden neighborhoods needs to concern us deeply. For these children, the journey from school to home at the end of the day can be a harrowing one. The streets may be full of gunfire and drug dealing. The stairs leading up to their apartment may be covered in blood. Even their homes may not be places of safety if the parents are drug-dependent. In their survey, Bell and Jenkins found that over 30 percent of the children they surveyed had witnessed at least one act of life-threatening violence (1990, p. 1). Twenty-nine percent of the children had seen a stabbing and 26 percent a shooting (p. 4). Often the victims were known to the children. The lessons that these children are learning about the value of human life should motivate us into rescuing them from the terrible conditions in which they live. Otherwise, they will soon be victims and perpetrators as a new cycle begins.

The statistics show us that offenders begin their trek toward criminality early. In 1989, juveniles between the ages of 10 and 17 constituted less than 11 percent of the population of the United States, yet they accounted for 16 percent of the arrests for violent crime and a most 30 percent of the arrests for property crime. A most 1.7 million arrests of youth, aged 10 to 17, were recorded in 1989. In 1987, the last year for which data are available, over 716,000 juveniles were admitted to public and private, juvenile facilities. From a one-day census conducted by the Office of Juvenile Justice and Delinquency Prevention, we can estimate that over 90,000 juveniles are in custody at any one time. The rate at which juveniles are admitted to custodial facilities increased over 46 percent from 1975 to 1987. The nation spent slightly over \$2.5 billion to maintain these juvenile facilities in 1987, an increase of over 190 percent from 1975 to 1987. The percent of juveniles housed in overcrowded facilities

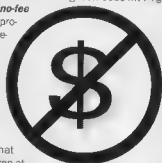
also increased dramatically from 1977 to 1987; that is, from 8 percent in 1977 to nearly 40 percent in 1987, a fivefold increase.

One hopeful note is contained in the RAND study, which found that the majority of youths arrested for drug offenses had not yet become drug dependent. Reuter et al., 1990, p. xv. Other dealers were much more likely to sell drugs in part to support a habit. It is imperative that we reach youths at that crucial threshold before dependency.

Problem Models

We must look carefully at populations at risk and determine their needs. For example, in Cambridge, Massachusetts, the *Work Force Unemployment Prevention Program* was set up under the auspices of the local Housing Authority to conduct a job-culture training program for youths 13 to 19 years old who reside in public housing, that is, young people whose parents have been unsuccessful in the employment market. The housing authority pinpointed this population of adolescents as being particularly in need of being introduced to the varieties of jobs available in our society and the skills needed to obtain and retain employment. The program helps them obtain part-time jobs in the Cambridge area and monitors their school performance. It is an interesting illustration of present-day priorities that the same day that the project won a \$100,000 award from the Ford Foundation's Innovations in State and Local Government program, Massachusetts cut its \$250,000 funding as part of statewide budget cuts.

Some schools whose pupils reside in neighborhoods with high levels of violence have initiated **no-fee after-school programs**. These programs postpone the children's return to a violent environment and provide a quiet place in which the children can do their homework or expand their learning. After-school programs can also be employed to teach children useful survival skills.



One type of training that should be considered for all children at risk is **conflict resolution**. As Bell and Jenkins, who discuss the need for this training, point out, "Violence erupts as individuals get locked into an escalation situation from which it is difficult to extricate oneself."

without loss of face, and for which they lack skills, other than violence for defusing" (Bell & Jenkins, 1990b, p. 148). Children from violent environments often do not have the opportunity to learn how to deal constructively with anger—theirs or other people's. They carry their poor conflict resolution skills into adolescence and eventually find themselves in face-off after face-off, increasing their chances of becoming either the victim or perpetrator of violence. Many schools include "health" as part of their curricula. Training in skills that will help students survive into adulthood should fit comfortably under this rubric.

For those who do break the law, we should have stations along the way that embody hope rather than despair about their redemption. Especially there should be **alternatives to imprisonment** for very youthful offenders. Jails harden people's criminality and label them as offenders for life. Behavioral psychology long ago demonstrated that positive reinforcement is a much more effective tool in modifying behavior than negative reinforcement. It must be kept in mind that, whatever intervention we employ, we have to aim to modify behavior that has developed over time in response to angry or neglectful treatment. Negative reinforcement should be a last resort. The threat of criminal justice intervention is a but not negative reinforcement in our society that repeatedly fails to deter undesirable behavior. We need programs that will provide encouragement and will expose youths to positive discipline, a concept that troubled youths, who frequently have poor impulse control, seldom encounter in their years of development.

We need more experimentation and research on the efficacy of programs designed to rehabilitate offenders, and we need to compare these rehabilitative initiatives with existing correctional programs so that sound, realistic policies can be developed to improve the situation. It is important to keep in mind that an evaluation of the long-term and short-term economic and social costs of incarceration programs is a very complex undertaking. On the one hand, we can say that while a felon is in prison, he is not out committing crimes and thus society is deriving a benefit. If he serves his full term of sentence, then the cost to him of engaging in future criminal activity will be great and he may be deterred from committing crimes in the future. If he is released early—because, as often happens, the prison system is overcrowded—then he will be receiving a mixed message. Because the prisons will continue to be overcrowded, he may predict with confidence that the cost to him of returning to his criminal activity will be of lesser proportions than the

law dictates. We have to consider also that serving time in prison brands the individual as a criminal and he may find it difficult or impossible to secure legitimate employment. This is a serious loss to society. We must consider further that the cost of keeping an offender in prison for a year is greater than the cost of sending him to Harvard for that year. Since prison is a mere holding of the individual securely away from the society against which he has transgressed, rather than an investment in his future ability to be a productive member of that society, the benefit the community derives from such expense is negatory.

One possible approach is to provide young offenders with a modified sort of incarceration in an environment in which discipline is taught and treatment, job training, and possibly job placement are provided. These programs could be funded through partnerships between business and government. The health care community should be encouraged to become involved. Through such programs, young people could learn that they can control their reactions, curb their impulses, and perform well in a disciplined environment. They would have a better chance at leading a straight life once they had paid their debt to society.



Bringing about behavioral change is a necessary but slow process. There is one thing that we could do very quickly to reduce the homicide rate if there were enough public will. We could **reduce the number of weapons available on the street**. The CDC found that from 1978 through 1987 firearms were involved in 78 percent of homicides of young black males (CDC, 1990, p. 870). More than half of all homicide victims are killed by people they know.

Homicides frequently occur when the volatile anger stirred up in arguments between family members, friends, or business associates is taken one step further by the presence of a gun. By reducing access to guns for people who are mentally incompetent or who have a record of committing violent crimes, we can take a step toward stemming the tide of killing.

Family

If we wait until youths exhibit anti-social behavior, we will be failing them and our society. It is clear from what we know of the causes of criminal behavior that prevention must begin at the cradle. We need to provide strong, healthy foundations on which to raise the

new generation

The family and the church provide external constraints against crime and inculcate values that will help incline young people toward positive goals. We in the African-American community, and U.S. society as a whole, need to strengthen our families into units that can nurture our young people's self-esteem and provide positive models of discipline, respect for authority, self-control, and mutual respect. Admittedly, this is not an easy task. One-half of black families with children are headed by only one parent—usually the mother. Of these families, 59 percent live below the poverty line (National Research Council, 1989, p. 10). It is clear that our community must recruit resources to supplement the traditional functions of the family.

Religious institutions are a logical resource to be mobilized in this effort. Religion can be a powerful force in building self-esteem. After all, most of the major religions hold as one of their tenets that humans were made in the image of their Creator. All teach values and can provide a normative influence over young lives spent in chaos. We have seen large numbers of people in their twenties and thirties searching for spiritual fulfillment in Oriental religions because their needs were not being answered by the traditional churches. Inherent in this phenomenon is an invitation for our churches to consider how they can best reach out to young people and satisfy the community's spiritual longings so that members will remain committed to churches that teach them to be guided by ideals higher than themselves, to celebrate the richness of family life, and to value high morals and community service as true treasures.

CHURCH

FAMILY

EDUCATION

Education, that third pillar of a healthy society, must play a pivotal role in the African-American community. The American education system is suffering from a failure of expectations vis-à-vis African-American children. The schools have not demanded a high enough performance from teachers and the teachers have not held high enough expectations of the black children they educate nor helped these children develop high expectations of themselves. The National Research Council found that *de facto* segregation continues in U.S. schools, in large part due to segregated housing patterns. The quality of education, as measured by standards of performance for both teachers and students, is lower in predominantly black schools than

Education

in predominantly white schools (NRC, 1989, p. 19). The National Research Council estimates that the odds that a black high school graduate will enter college within one year of graduation are less than one-half the odds of his white peer. Further, they determined that the high school dropout rate for blacks is twice that of whites (pp. 19-20).

Education has always been touted as a route to betterment. Yet Carter G. Woodson, in his 1933 book, *The Mis Education of the Negro*, suggests that the educational system does not teach blacks to uplift the African-American community but, rather, promotes individual success. Because it does not teach African Americans to value their heritage but, rather, to "transcend" it, it detaches black leadership from the masses. This constant loss of the best trained reduces the likelihood that African-Americans will create a community with a shared sense of values and perspective. Instead of detaching themselves from the community, the educated must realize that they have a duty to turn their talents to the service of others in the community. Those who have climbed higher on the ladder should give a hand up to those who are still lagging behind.

What causes so many of our educated people to develop a low opinion of their heritage? From the beginning of their schooling they are taught that culture comes from Europe. Africa is often omitted from any discussion. The role of blacks in U.S. history is frequently omitted as well. How can our children grow up to see themselves as people of value and as full citizens if they cannot recognize themselves in U.S. or world history? The history of Europeans coming to this country is transmitted by parents and educators to children of European background, but African-American children have not enjoyed a symmetrical experience. They have been left to suffer a gap in their story. This exclusion must be corrected to establish for Black and other children a balanced perspective. We need to make our young people aware that blacks took part in the Revolutionary War, in the Civil War, and in the cowboy enterprises of the West; that our forebears did not passively accept slavery, but rebelled against it in the United States and the Caribbean. Further, we must show our children that the African continent of their ancestors gave birth to rich, varied cultures with long, proud histories. This history is important for the self-esteem of our children.

The United States must acknowledge that its society is multicultural and that the fabric of which it is made will unravel if the country continues to give ascendancy to one culture over another. This multicultural quality should be recognized by the educational

system. We must be cautious about how we structure a multicultural educational program, but above all, we must not let ourselves be hindered by a lack of ambition. Awareness of Africa's contributions to civilization among African-American children is



imperative, but we will be setting our sights too low if we stop there. Children who are not African American should also be made aware of African history, just as African American children should be exposed to the histories of other ethnic groups. In some schools with "multicultural" programs, the African American students spend their days in Afro-centric classrooms while Puerto Rican and other Hispanic children spend their days in Hispanic classrooms. The twain never meet. An opportunity for showing these young people the interrelatedness of cultures is missed, and with it a lesson in the importance of forming productive relationships across cultures.

It is easy to see why a lot of recent interest in educational change in the African-American community has focused on Afro-centric education. Teachers involved in this type of schooling are likely to believe that their students have a substantial potential for achievement. Expecting more from them, they will get better results. An educational system that fosters children's sense of self-esteem may be able to provide some of those elements of family that many children miss: a positive model for the black men and women of tomorrow, bonding, and a feeling of community and acceptance. This would be particularly likely to occur in a school that emphasized the positive aspects of an African heritage.

As Woodson suggested six decades ago, we must identify the real needs of African American students and their communities. Our young people should feel that they have many options from which to choose a route to success that best suits them individually. Those who are interested in academic endeavors and the professions for which university training is required should be encouraged to rise to their full potential. Yet our society's overemphasis on college education as the *sine qua non* for success and social acceptance flies in the face of the fact that many wealthy people amass their fortunes

Options



bystarting out in small businesses. Youngsters who are not academically inclined may come to feel that the only point of high school is to prepare someone to go to college and that since they do not plan to go, there is no point in hanging in there until they get their diplomas. The RAND research found that 67 percent of male offenders aged 18 to 29 whom they studied were legitimately employed at least part-time. However, of these males—a between the ages of 19 and 29—only 35 percent had completed high school (Reuter et al., 1990, p. 40). At first glance it may seem that these men were doomed, by the lack of education, to such low wages that no legitimate employment could hope to equal those earned, at great risk to themselves, through crime. However, the link between education and actual earning potential is not absolute. Training should be provided to our young people that is based on their individual capabilities and interests. The options should be increased—to go to college to earn trades or to pursue legitimate entrepreneurship, thus bringing profit to themselves and their neighborhoods.

In examining the value of entrepreneurship, it may be helpful to look at the example of immigrant communities. Many immigrants who cluster in neighborhoods open shops that cater to the needs and tastes of their communities—old-country delicatessens in Italian neighborhoods, small grocery stores that carry roots and tropical fruits in Hispanic-Caribbean neighborhoods. They operate restaurants, jewelry stores, and a whole array of other businesses providing services sought by their special communities. Community members patronize these businesses, which in turn provide jobs for them. The capita remains within the community. People stay in the communities because their families are there and the places where they worship, shop and entertain themselves are there.

African-Americans are also clustered in neighborhoods. The National Research Council found that blacks in the United States live in racially segregated communities, partly as a result of discrimination in the real estate market (NRC, 1989, pp. 49-50). Furthermore, blacks are much more likely than whites to live in areas of concentrated poverty (p. 51). Residents of such neighborhoods seldom come into contact with people in higher income brackets who might help them rise economically. African-Americans have an opportunity to tap the existent market of their communities through businesses designed to

cater to their specific needs, in much the same way as immigrant merchants stock their shops to suit the needs of their communities. Corporate and financial institutions should be encouraged to sponsor this entrepreneurship, perhaps through creative public-private partnerships. Corporations could adopt neighborhoods in much the way they now adopt schools. The economic benefits of a concentrated effort at entrepreneurship by African-Americans could be considerable. Not least of these benefits would be the creation of many new jobs, thus diminishing residents' need for contacts outside the community in order to advance.

Conclusion

With determination and clear sightedness, African-Americans can build strong communities that will be economically self-reliant and socially cohesive. Such viable African-American communities will serve to improve the conditions of all its members and will produce new generations who will find straight paths toward their legitimate goals. All of U.S. society will reap significant benefits as crime is reduced and tomorrow's work force thrives.

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Chapter Five

Verbal Skills and Violent Behavior: Implications for Public Policy Action

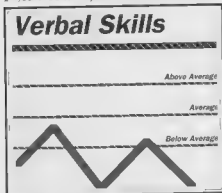
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Introduction

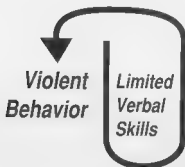
It is widely held that the literacy level among offenders convicted of violent crimes from low-income areas is very low. Statistics compiled in 1991 by the Office of Education Services of the New Jersey Department for Corrections show that the average reading levels for the total state prison population in the age ranges of 12 to 17 years, 18 to 30 years, and over 30 years are 6.7 years, 7.1 years,

and 7.5 years, respectively. Using the same age group order, the average levels of language skills are 5.6, 6.1, and 5.9, respectively. It should be noted that the total prison population includes offenders from suburban and other more affluent communities in New Jersey who



usually have more formal education than offenders from low-income areas. Therefore, it seems reasonable to assume that the average reading and language skills levels for offenders from low-income urban areas are significantly below average reading and language skill levels of the total prison population.

Many offenders convicted of violent crimes from low-income urban areas were unskilled and unemployed prior to their incarceration. The high level of literacy among these individuals has been often used to account for their unemployment status by public officials, business leaders, labor leaders, human service workers, academicians, and other concerned citizens. The violent behaviors



which lead to the incarceration of offenders has been attributed frequently to their unemployment status. However, this explanation may be only partially true. Results from several studies show that violence-prone aggressive behavior patterns often begin before the child reaches adolescence and remain relatively stable throughout adulthood (Boone, 1991; Botha & Gerhard, 1990; Eron, 1987; Olweus, 1979, and Olweus, 1977). Thus, the violence-prone behavior patterns of many offenders may have started during childhood.

While poverty resulting from the inability to obtain and maintain employment may be a major contribution to violent behavior, there may be other important factors involved in violent behavior that have not received sufficient consideration. For example, my work on aggression suggests that violent behavior is related to language skills as early as nine years of age.

What role, if any, does language play in the control of human violence? Specifically, my research seeks to determine whether things being equal, African American and Puerto Rican youths - with *limited verbal skills* are more likely to use physical violence to resolve conflicts than their more verbally fluent counterparts. If evidence obtained from studies supports this hypothesis, then it is my profound hope and belief that research about this important issue can be used to shape public policy initiatives to reduce violence and hostility in urban areas.

Data derived from numerous studies suggest that human violence-prone aggression represents a highly complex form of behavior that is associated with demographic factors such as poverty, race, family size, number of parents in home, and birth order. Moreover, human aggression is a form of behavior in which causal connections have been made with such factors as frustration, hostility, and competitive initiative. Thus, as can be seen, human aggression is related to many factors. One of the many factors that seem to be related to aggression is "language." Evidence accumulated over the years suggests that a great deal of violent and hostile aggression displayed by African American and Puerto Rican youths may be traced directly to their inability to articulate their inner feelings and concerns as well as their inability to use verbal skills to avoid or resolve interpersonal conflicts. In a study using African American and Puerto

Rican male children attending Newark Public Schools, we found that levels of proficiency in the use of language was associated with levels of observable violence-prone aggression (Boone & Montare, 1976). The relationship between human language processes and human violence-prone aggression was referred to in my work with an associate as the "Language Aggression Hypothesis" which specified that relatively low levels of proficiency in the use of language should be associated with relatively high levels of violence-prone aggression, and, relatively high levels of language proficiency should be associated with low levels of violence-prone aggression (Boone & Montare, 1976). Although my work and the recommendations of this paper are focused on African American and Hispanic adolescents, the "Language-Aggression Hypothesis" is applicable to all races.

It is widely recognized that "language" plays a variety of important roles in our lives. For example, language serves to communicate ideas, thoughts, and feelings as well as interpret and understand the same from others. The observations reported in the writings of Vygotsky (1962) and Luria (1961) suggest that language provides a means to direct and control thoughts and feelings and channel them towards the solution of problems. The work of these Russian researchers provide some of the existing evidence that language can serve to direct and control violence-prone aggressive behavior. It also provides a means to direct and control the behavior of others. Therefore, an improvement in an individual's verbal and linguistic skills may also improve that individual's effectiveness in controlling the behaviors of others and thereby, allow the individual to avoid violence in interpersonal conflict resolution situations.

The purpose of the present report is to shed light on the relationship between language and aggression with the hope that this information will be useful in the development of programs designed to remedy problems of violence among African American and Hispanic youths residing in low-income urban communities. Bearing this in mind, the research performed to test the Language Aggression hypothesis will be presented here.

The participants in this research consisted of 55 African American and 25 Puerto Rican males between 9 and 13 years. All participants attended elementary schools in the Newark N.J. Public School System. Approximately 80% of the parents for this sample fell within unskilled laborers, unemployed, or welfare categories.

Characteristic of Sample

Measures of Aggression and Language

Aggression was measured by a test that consisted of physical and verbal aggression categories. *Physical aggression* consisted of categories labeled "annoys/tease/interferes", "pushes/pulls/holds", "hits, strikes"; "makes threatening gestures", and "snatches or damages property of others". Categories labeled under *verbal aggression* included "commands/demands", "disparages", "entices another person to injure a third person"; "refuses to comply"; "denies activity or privilege to another", "shifts blame"; "claims possession, tattles", and "makes verbal threats".

Language proficiencies were measured using the vocabulary subtest of the Wechsler Intelligence Scale for Children (WISC) and the total words spoken during a free speech session, and the number of different words used during that session.

Procedure for Stimulating Aggression

The procedure used for stimulating and observing aggression are described in my earlier writings (Boone, 1988, and Boone & Montare, 1976). The boys who participated in this study were observed in a school room consisting only of members of their respective race and grade level. Only the group of boys being observed were in the room during the observational period. Each group consisted of boys who had already spent considerable time together in school and community settings.

Results

Table 1 - Language Scores

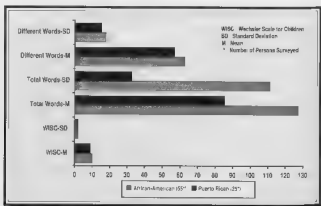
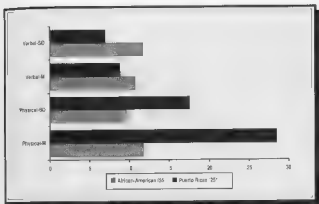


Table 2 - Aggression Scores



Does language serve as one of the many precesses that can direct and control human violence? The results presented in Table 1 (Language Scores) and Table 2 (Aggression Scores), suggest that the levels of proficiency in the use of language are related to levels of observable physical violence among the boys in this study.

The data in Tables 1 and 2 show that on the three measures of proficiency in the use of language, the scores for Puerto Rican youths are significantly lower than their African American counterparts; and, at the same time, the Puerto Rican youths displayed more physical violence than the African American youths. No significant difference was found between the verbal aggression scores of African Americans and Hispanics. Thus, these results provide support for the Language Aggression hypothesis which links low proficiency in the use of language to high levels of observed aggression and high levels of proficiency in language with relatively low levels of aggressive behavior.

While I recognize that human violence-prone aggression is influenced by many factors, including cultural conditions, the evidence presented here suggests that the level of language proficiency among African American youths and Puerto Rican youths is related to the amount of physical violence observed in those groups. Although more research will be needed to determine if a causal relationship exists between verbal skills and violent behavior, findings derived from my preliminary work suggest that levels of proficiency in the use of

language among violence-prone youths should be considered in designing programs that strengthen their prosocial behaviors.

Conclusion

The preliminary results of my research suggest that language proficiency skills are related to the manifestation of human violence-prone aggressive behavior. The results linked low proficiency in the use of language to high levels of aggressive behavior. Indeed, the hostile and destructive behavior that is observed in African-American and Hispanic adolescent males from urban areas may be related to the inability to effectively use language to express feelings, thoughts and needs, and the inability to use language to change and control the behaviors of others.

An important implication arising from this research is that, in addition to other rehabilitative activities, programs that improve verbal skills of violence-prone individuals may also reduce the rampant social aggression and perhaps strengthen the prosocial behavior (i.e., cooperating with, helping, and supporting others). As previously mentioned, an improvement in an individual's verbal skills can serve to strengthen his/her self control as well as help that individual become more effective in controlling the hostile and destructive behaviors of others.

Recommendations

In light of the above-referenced observations, **it is recommended that programs which focus on improving language skills be established for both violence-prone youths and youths who may be at high risk of becoming violence-prone. These youths also should be provided with programs that teach them how to use language to avoid violence in interpersonal conflict situations; and how to use language to resolve interpersonal conflicts.** Given that youths are most impressionistic during the preadolescence period, programs designed to foster prosocial behaviors are likely to be more effective during the early school years than later. As noted in several studies, antisocial aggressive behavioral patterns often begin in childhood and remain relatively stable through adulthood. Bearing this in mind, it is important that programs designed to promote prosocial behavior be introduced early in development. **It is recommended that programs which focus on the skills mentioned in the previous recommendation be introduced in early childhood and provided through the secondary school years.**

For many years, the number of African American and Hispanic urban youths incarcerated in New Jersey penal institutions has been increasing steadily. Many of these youths have limited verbal, writing, and reading skills before incarceration as well as after their parole. Therefore, when released they often lack the language and literacy skills required in order to both avoid violent interpersonal conflicts and express their thoughts, feelings, and desires in socially acceptable ways.

It is recommended that the verbal, writing, and reading skills of youths be assessed before sentencing; and, literacy programs for the development of skills in these areas be required for them during incarceration. The criminal justice system of New Jersey should explore the possibility of establishing an alternative program that would provide intense literacy and language skills development from the onset of incarceration for the population discussed in this report. Excluding offenders with learning disabilities, the criminal justice system of New Jersey should also explore the feasibility of establishing minimal levels of proficiency in the use of language, writing, and reading for offenders as considerations in making parole decisions.

Data derived from my recent research (Boone, 1991, and Boone and Flint, 1988, on aggression in African-American male adolescents residing in Paterson, New Jersey indicate that family relationships and family interaction patterns are potent predictors of violence and aggression in African-American male adolescents. I found that youths who were identified as violent and aggressive in school and community settings displayed the same behavior patterns in their homes. The relationship and interaction patterns between mothers and their male children were especially powerful predictors of aggressive and nonaggressive behavioral patterns in male children. Clearly, "the family" plays a vital role in controlling and maintaining antisocial as well as prosocial behavior in African-American male adolescents. Therefore, programs designed to promote prosocial behavior and reduce violence-prone behavior in urban youths should adopt an approach that considers "the family" a critical part of the therapeutic community. This approach may require the inclusion of entire family units for treatment. That is to say, therapeutic programs should be tailored to help both violence-prone youths and their family members, especially mothers who reside with them.

It is recommended that literacy programs and conflict-resolution workshops also be provided to family members who live with violence-prone youths. Otherwise rehabilitative gains made

with violence-prone youths outside of their homesettings may be short-lived, if they return home to the same conditions.

Finally, it is important to note that while the aggressive behavioral indices that were used in the research reported in this article were not the more severe aggressive acts that may be commonplace in low-income urban areas, numerous studies show a high positive correlation between the different forms of aggression. Therefore, it seems reasonable to conclude that the behavioral indices used to measure aggression in this article may be good predictors of the more severe aggressive acts among members of the population used in this research.

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Chapter Six

Pre-Trial Justice -- A Black and White Litmus Test

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Difficult problems lead to difficult solutions. Within the last several decades time has taken its toll on the value systems which govern our lives. As we face new and difficult societal problems, clear cut distinctions between right and wrong have become vague,

Introduction

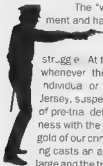
distinguishing rationales obscuring an overriding and controlling thesis of pragmatism. The criminal element in our society has expanded both in numbers and in the scope and magnitude of criminal activity undertaken. Criminal activity is no longer depicted by the "Cops and Robbers" of Dick Tracy fame. Crime goes far beyond robbery and Dick Tracy's "Crime Stoppers" have been outdone by modern law enforcement and criminal justice techniques.

The most fragile in our modern world are the most vulnerable and the most often victimized. The elderly are not safe (even at home) from vicious assaults, and our children must be taught to fear even a gentle touch lest they become the victims of sexual abuse and even death for the sake of some deranged soul's bizarre pleasure. Some of the violence in our streets and in our homes is inexplicable, but the source of much violence is directly attributable to the use of illegal drugs - the most pervasive evil to be reckoned with by any society in modern times. We are all its fearful victims.

Those who use drugs destroy themselves with communicable disease, overdoses, and social degradation. Moreover, the quest for the means to satisfy an insatiable desire, more often than not, leads to deadly violent criminal activity affecting us all. In truth, the nation is overwhelmed with crime and particularly in densely populated areas we have become desperate to "take back our city streets,"¹ return our public schools to their educational purpose, heal our strife torn families, put our children back into childhood and return our elderly to their former sanctuary of respect. Some are prepared to do this at

almost any price

And, while these are laudable goals, they are by no means easily attained. Not surprisingly, we have been told war is the answer. The term "war" suggests the difficulty of solution. War, however, is the ultimate test of character, and, for those tested it is a test that most fail. War brings out the baser instincts of mankind and in general ferments an overriding attitude of expediency. The comment, "all's fair in love and war" has earned its frequent use without recognition of price. Yes, the "war on crime" or the "war on drugs", whatever the case may be, has been costly. Not just in administrative dollars, but the cost of investigation, arrest, prosecution and punishment; but in social destruction as well. The point to be made is that the cost of expanded law enforcement is not the only cost of the war on drugs. But the overburdened criminal justice system has taken its toll in other ways. For example, the delays in prosecuting those charged with crimes have permitted a belief among some that they need no longer fear "swift & certain justice." The system's failures have resulted in a significant loss of criminal justice credibility. Our most fundamental institutions have not been spared; indeed even the venerable Constitution has suffered. But in terms of the human cost, some have paid more dearly than others.



The "war on crime" has demanded more law enforcement and harsher punishment for those convicted. For that matter, even the accused before conviction, are not to be molly coddled in this struggle. At the federal level, pre-trial detention is permitted whenever the accused poses "a threat of harm" to an individual or a community,² and at the state level, in New Jersey, suspect bail policies produce similar results. The use of pre-trial detention as a weapon of war gained in effectiveness with the imposition of mandatory sentencing, the fool's gold of our criminal justice system. While mandatory sentencing casts an aura of strict law enforcement over the public at large and the trial setting too, it wreaks havoc upon the criminal justice system as a whole. For most charges of criminal activity are traditionally disposed of by plea bargaining or some other means other than trial.³ Mandatory sentences leave little room for pre-trial negotiation and so the pre-trial period has lengthened as the number of criminal defendants awaiting trial has increased.

Not to be overlooked, the war on drugs follows a pattern similar to that of the war on crime. There were threats of increased *Disease*.

prosecutions to include even the most minor incidents of marijuana use. New Jersey Attorney General Cary Edwards stepped up the state's assault on illegal drugs in 1988 and announced that users would no longer be a protected class. After determining the need to curtail demand, he announced at a press conference that those caught with a single marijuana cigarette would be arrested and prosecuted. Enhanced sentencing, extended terms for drug violations within 1000 feet of a school or school bus have been liberally approved, along with mandatory sentencing. The statute has been strictly construed even though the alleged criminal act posed no possible threat to school children. For example, a visitor of an inmate in a county jail which happened to be located within 1000 feet of a school was apprehended while attempting to pass drugs to the inmate inside the jail. She was subjected to the enhanced penalty longer prison term although there was no relationship between the wrongful conduct and the purpose of the statute.

As the percentage of our population accused of wrongful conduct began to swell and the criminal justice system staggered under notions of speedy trials and both swift and certain justice stumbled into lengthy pre-trial delays and inhumane incarceration. The judiciary now speaks of "the criminal court backlog." It is whispered that some accused of crime, out on bail, will never go to trial. The system is stalled.



The war on crime was bound to become a lengthy war, and, therefore, a costly one, if only because the criminal justice system by its very nature does take prisoners! And therein lies the rub! The system did not and does not have the capacity to hold its

prisoners. On the one hand, the right to detain those accused of crimes, in wholesale numbers, while awaiting trial is tenuous at best. To do so without a hearing on the specific question of pre-trial detention is constitutive of a violation of the 5th and 14th amendment due process grounds (unless the Constitution is "momentarily set aside"). While the notion gets no support here, more than one public official has asserted the position that the exigencies of the times justify a relaxation of constitutional standards to permit the utilization of extraordinary

measures. The contrary view is upheld here. In times of crisis, it is the purpose of the Constitution to insure by its standards that emotionalism or fear do not carry the day, resulting in an abandonment of traditional standards of justice and fair play.

On the other hand, the costly incarceration of prisoners (between \$24,000 to \$39,000 per annum)⁴ packed in diminutive cubicles under the most onerous of crowded conditions challenges the Constitution's 8th Amendment proscription against cruel and unusual punishment. And upon closer inspection of the population of those accused who do make bail and those who don't, serious 14th Amendment equal protection arguments come into view. The jail population is not only identifiable by its poverty but by its complexion as well. While there are some doubts and arguments over criminal identity, i.e. just who are the criminals in our society, none exist over the New Jersey jail population - it is overwhelmingly poor and non-white. Most are presumed innocent as a matter of law, but are incarcerated just because they are too poor to make bail.

Recent figures show a national prison population that is 60% white, while the nation in general is approximately 75% white. There is some disparity between the general population index and the prison population. But not enough to obscure the reality that there are more whites engaging in criminal activity than any other race just because of their population numbers. But the issue is obscured by the media in the most densely populated areas where the largest audiences formulate their perceptions and the largest concentrations of non-white minorities exist and engage in significant criminal activity.

The purpose of this article is to make the observation that the State of New Jersey has gone overboard and has put into place a questionable de facto pre-trial detention program shrouded in an unrelenting bail policy that strains fundamental notions of due process, and, then to argue that if the pre-trial detention program overcomes the due process hurdle, a quick look at who is detained and who is not demonstrates that an equal protection challenge on the basis of race should prevail.

Pre-Trial Detention and Due Process

Some have argued that New Jersey runs an exemplary correction system simply because no Federal court order has had the effect of placing the State Department of Corrections under receivership. There is a counter argument that judgment has been made simply because Executive Order No. 106 signed by Governor Kean a decade

ago, declared a state of emergency and placed all incarceration facilities within the state in a quasi-receivership, thus averting the necessity for Federal intervention. The Executive Order, because of a rapidly increasing prison population, imposes upon the Commissioner of the Department of Corrections the sole responsibility for placing inmates, whether the placement be in a municipal, county or state facility.

And, although this emergency order may have forestalled Federal intervention through jail population manipulation, it does not mean that the issues of overpopulation and antiquated facilities (which breed crime, violence and disrespect for law and order) have not been litigated. There are and have been suits in the federal courts which are either being monitored by the judiciary as a consequence of a settlement, or are being actively litigated.⁵ Fines have been assessed, units have been closed and new facilities have been constructed, but as soon as one matter is disposed of it seems another takes its place. Indeed where new facilities have been constructed under court order, new lawsuits have been instituted alleging unconstitutional overcrowding in the new facility.

While the burgeoning inmate population has been attributed to mandatory sentencing and expanded criminal conduct due to the enormous drug problem, it is here contended that those issues are not exclusively responsible. A major contributing factor to the onerous jail conditions is the fact that New Jersey has moved rapidly in the direction of a preventive detention system in an effort to manage alleged spiraling criminal conduct.



Too many inmates are housed in county jails simply because they are unable to meet bail requirements amounting to \$1,000 or less. A recent five county study conducted by the Office of the Public Defender of the State of New Jersey showed that the overwhelming majority of detainees unable to make bail were at the lowest end of the economic scale as opposed to significantly higher amounts. A bail system which results in more defendants being incarcerated than those who have been convicted must be called a preventive detention system, and any preventive detention system which incarcerates without a hearing on the specific issue of detention is violative of contemporaneous notions of due process.

Further, the bail system has operated in a discriminatory manner based upon readily identifiable class distinctions. Big drug dealers, for example, who appear before the bar of justice are rarely detained as a consequence of an inability to make bail. Indeed, in

setting bail, judges have often imposed apparently astronomical sums, but in most of those instances the bail has, in fact, been made and the alleged perpetrator of wrongful conduct is not detained. While at the other end of the spectrum, bail has been set as low as \$100 yet the accused has been unable to make the bail. In some counties with high population densities, such indviduals have languished in jail for month without trial, because of the inability to make a bail which would otherwise appear to be *de minimis*.

Bail, in these instances, is not set as a consequence of happenstance; the judge who imposed bail knew that the big drug pusher would "walk" and that the less cashed offender would not. The high bail was imposed to avoid political criticism and the low bail set, but not made, offered the judge similar political protection. It is, therefore, appropriate to look at this system of economic bail to determine the extent to which it has moved us toward a system of preventive detention, and then look at the extent to which that system of preventive detention violates notions of due process.

Under the New Jersey Court rules, consistent with the state Constitution, the right to bail is mandated for all cases except where the indvidual is charged with a crime punishable by death. Where a capital offense is charged, the prosecutor must provide "proof that there is a likelihood of conviction and reasonable grounds that the death penalty may be imposed," in order to have the court deny bail to a defendant.⁶ Bail must be set on such terms, as in the court's judgment, will insure the defendant's appearance for trial after considering the accused's background, residence, employment, family and particularly the general policies against "unnecessary sureties and detention."⁷ The court is also allowed the discretion to release a person on his or her own recognizance and to impose conditions with respect to that release.

The New Jersey Supreme Court further elaborated on the specific factors a court should take into consideration in making a bail decision in *State v. Johnson*, 61 N.J. 351 (1972). In *Johnson*, *supra*, the Court enumerated the following as essential to a bail decision:

- (1) the seriousness of the crime charged against the defendant
- (2) the apparent likelihood of conviction and the extent of the punishment prescribed by the Legislature,
- (3) the defendant's criminal record, if any, and previous

record on bail, if any,

- (4) the defendant's reputation, and mental condition;
- (5) the length of the defendant's residence in the community,
- (6) the defendant's family ties and relationship,
- (7) the defendant's employment status, record of employment and his financial condition
- (8) the identity of responsible members of the community who would vouch for the defendant's reliability; and
- (9) any other factors indicating defendant's mode of life, or ties to the community or bearing on the risk of failure to appear

Furthermore, the Court clearly recognized that while bail inevitably discriminates against the poor, indigency itself "cannot outweigh the nature of the crime."⁸ This statement demonstrates that the central emphasis of a bail decision is controlled by the nature of the crime charged. Although the Court notes that excessive bail should not be utilized as a means of pre-trial detention, and that the "constitutional right to bail and the presumption of innocence cannot be overlooked"⁹ (*id.* at 365), a simple analysis of outcome determination will demonstrate that the current bail system does impose a pre-trial detention system, even if only for the poor.

The decision to set bail allows a judge almost unfettered discretion, including the power to release the individual on his or her own recognizance. However, this discretion is often used to set bails which exceed an indigent defendant's ability to secure release. Therefore, it is alleged that the byproduct of the monetary security system is preventive detention for indigents.

A sampling of State Public Defenders¹⁰ reveals that the pre-eminent factor within a judge's mind concerning bail is the seriousness of the crime alleged, and the potential that a controversial bail decision could result in adverse media publicity for the judge. Individualized factors such as the likelihood of conviction, the likelihood of returning to court, and prior record, all become secondary concerns. Further, it is clear that in many instances the prosecutor's recommended bail significantly sets the parameters for the range of bail to be set by a judge. The matter is further complicated by the reality that bail procedures are left within the discretion of the assignment judge of the county. Consequently, practices vary from

county to county. In some counties, a bail determination may be reviewed on 24 hours or a notice while some counties require the filing of moving papers which are not reviewed for 14 days.

Therefore, the result of a bail system rooted in monetary security is that, despite the seriousness of the charges and likelihood of conviction, individuals with greater economic resources will be freed to await trial and those persons without sufficient resources will be detained pending trial. The difference goes beyond inconvenience because studies have shown that *detained persons are more likely to be convicted or to plead guilty* than those released either on bail or recognizance. While there is some dispute over the causes of such a result, the data is incontrovertible. Some argue that those detained are multiple offenders, lack community ties and in general reflect a level of instability coupled with prior conduct that account for the result. However, there is a counter argument. Incarceration prior to trial cuts off the accused from witnesses and in general hampers the accused from assisting in his or her defense.¹¹ Consequently, a monetary security system will discriminate against individuals of limited resources, i.e., the unemployed, displaced persons, and persons leading non-mainstream lifestyles.

While there has been over the last two decades a raging dispute as to the constitutionality of the concept of preventive detention,¹² it is not the purpose of this paper to challenge the validity of the concept in the abstract. Rather, the purpose is to analyze the concept and to determine what must be imposed in any pre-trial detention system to insure, for the most part, a possibility of validity. Such an analysis will demonstrate that it is impossible to back into a system of pre-trial detention. It is certainly constitutionally impermissible to have a bail system which has the effect of operating as a pre-trial detention system, because to do so clearly violates the most fundamental notions of due process, both procedural and substantive. And yet, the bail system here in New Jersey survives in defiance of critical analyses.

At the outset it must be conceded that any pre-trial detention system constitutes a deprivation of liberty. Such a deprivation can only occur lawfully as a consequence of strict adherence to due process notions. In order to deprive one of one's liberty, procedural notions of due process require notice and a hearing before an impartial tribunal. Proceedings designed to set bail, while they may arguably give notice that the accused faces a loss of liberty, do not provide the prerequisite hearing on the issue of detention. The issues

adopted to set bail are of necessity vastly different from the issues which ought to be addressed to fit the constitutional requirements for pre-trial detention. Preventive detention systems ought to require substantial preliminary proof of a defendant's guilt. Bail systems have no such requirement.

Further, it is improper for a judicial officer to impose a financial condition that results in the pre-trial detention of the accused. The imposition of such a financial condition does not take into account a preliminary assessment of a defendant's guilt. Indeed, under the Federal Bail Reform Act, when the accused cannot make bail, a hearing on pre-trial detention is required.³

Further, most existing pre-trial detention systems set a time limit on detention so that when the hearing is being conducted a precise measure of the loss of liberty exists in situations where bail is used for purposes of achieving precisely the same goals as those of pre-trial detention, the deprivation of liberty can be virtually unlimited, notions of speedy trial notwithstanding. Studies cry out with example after example of lengthy incarceration of up to a year, and in rare instances longer, just awaiting trial.⁴



The current wave toward pretrial detention systems stems from the notion that spiraling levels of crime require extraordinary measures to insure the safety and well-being of its citizens. Therefore, the traditional standard for setting bail (a likelihood that the accused will appear for trial, born in antiquity has been expanded to include consideration of any potential threat to the community at large or to any individual by the accused should release be granted. That threat, it is alleged, is manifested in the gravity of the crime committed, the number of previous arrests and/or convictions, and the likelihood of conviction for the crimes charged.

Those standards, however, when used in a preventive detention system, require constitutional balancing at a very fundamental level. There are at least two standards which have been articulated. The first poses this question: In the face of depriving the accused of his or her liberty, is there a legitimate interest that is being protected? If that is the standard there are those who would argue the outcome is easily stated: Safety and the well-being of the community at large is a "legitimate" State interest and, therefore, pre-trial detention is warranted in almost any case. Consequently there are those who argue for a higher standard,⁵ a "compelling State interest." Once the

standard is set, it should be noted that the balancing ought not take place in the abstract. There must be a showing that the accused does, in fact, impose and constitute a danger to the community at large. It is contended here that such an analysis is inappropriate for the setting of bail but is required at a pre-trial detention hearing.

The due process analysis is not limited to the hearing. It includes the constitutional standards set for an incarceration facility which must take into account the status of the inmates. Recently, all too many cases have decided that overcrowding, lack of adequate utilities, and an absence of health care imposing serious health risks warrant judicially ordered releases. It is to be noted that those released have been convicted of wrongful conduct and indeed may well be convicted felons. If those conditions are often egregious enough to require the release of convicted felons, then they are certainly too egregious to permit the operation of a pre-trial detention system, incarcerating only the accused. Just how does the presumption of innocence impact upon that judgment?

Such incarceration, of a certainty, would constitute punishment; punishment for pre-trial purposes under the onerous conditions suggested violates not only due process but raises the specter of the 8th Amendment's proscription against cruel and unusual punishment as well. Even in today's tenor of fear-driven law enforcement, it would not be possible to physically torture an individual, almost within the public's eye, to extract a confession for the purpose of establishing guilt. Yet, it may be happening daily through pre-trial detention. As previously stated, a guilty plea is more likely to be obtained from those who are unable to make bail and remain incarcerated as opposed to those similarly charged but released before trial. And, a guilty plea is no less of a confession. It is reasonable, then, to believe that a lengthy stay in jail under the worst conditions imaginable, until the desperate accused pleads guilty for time served, just to bring about release ought to be impermissible. It seems an awful lot like torture and confession.

And so it would seem that any analysis engaged in which permits one to conclude that an economic bail system has the effect of imposing a pre-trial detention system, of necessity is violative of the Constitution. No amount of balancing, no assessment of compelling State interest, no concern for the safety and welfare of the citizens can justify such a juxtaposition of pre-trial detention goals with those of a legitimate bail system. New Jersey would do well to take heed.

Further, it has been held that where economic discrimination denies the indigent the right to an appeal, an individual classification created because the appeal is deemed to be indispensable from trial¹⁶. The creation of an economic class for purposes of imposing pre-trial detention, through a bail system, however, will probably survive constitutional scrutiny simply because it is pre-trial and not necessarily "fundamental" to a fair trial¹⁷ even though it does result in loss of liberty. Now it's bad enough to cast the issue of bail and detention in economic terms and concede that but for the "price of a ticket" wholesale numbers of indigents suffer a significant loss of liberty, but there is more. It is significant to observe just who the "indigent" are in our society. It turns out that those who suffer the broadly cast net of pre-trial detention are overwhelmingly Black or Hispanic; it's no secret what the inside of most county jails look like.

Equal Protection: The Final Nail in the Coffin



For reasons that are beyond the grasp of logic, penal institutions practice racial segregation more routinely than any other institution of its size in America. So to enter a jail and see only selected wings housing inmates of one race could be misleading when trying to determine the racial mix of the jail population. But to enter a county jail in a densely populated urban area such as Essex County would certainly show an overwhelming number of Blacks and Hispanics incarcerated to the exclusion of whites in any case. Most would say should they be asked that those incarcerated are there for two reasons: one, they probably did commit a crime, and, two, it's a right that they are in jail awaiting trial just because they couldn't post bail. We are to do emphatically that they are not in jail because they are Black or Hispanic; i.e., because of their race!

Here, it is argued that any bail policy which does not carry with it a presumption of release on recognizance will have a disparate impact upon the impoverished, and in the urban areas that means a disparate impact on Blacks and Hispanics. Indeed here in New Jersey with its diversely populated urban areas, the "disparate impact" of pre-trial detention is virtually absolute. For, in some counties the pre-trial detained population is almost exclusively Black and Hispanic. A look at our urban county jail populations would lead one to believe that all of those committing crimes in New Jersey are Black or Hispanic and

It just is not so.

The reasons for the complexion of the jail population are varied, even if bail is the linchpin of the arch of pre-trial detention. To begin with, some accused of misdemeanors are not even arrested, they are "charged" with wrongful conduct by the issuance of a summons. And, if they are not arrested, bail does not become an issue. Blacks and Hispanics are not typically "summoned" to court. They are arrested. Once arrested bail becomes the issue, and the argument is that there is no intent to discriminate on the basis of race. Bail policy is color blind and, therefore, neutral.

But the other side of the coin abhors abstract notions of specific intent and focuses upon the predictability of the outcome, cast the net of a monetary bail system and whom will be ensnared a most exclusively? Does it make sense to assume that bail policy intends the obvious consequences of its imposition? And is it not appropriate to hold the policy responsible for its obvious consequences? No study is being conducted here to statistically demonstrate the disparate impact of pre-trial detention on Blacks and Hispanics due to racial discrimination. And certainly no arguments are being made that no such study is needed, quite the contrary is true. Without such a study the apparent disparate impact suggests that there may be a host of reasons for the disparity and that racial discrimination, however unidentified, may be a contributing factor. This situation, on a much smaller scale, is similar to the antecedents to *Furman v. Georgia*, 408 U.S. 238; Sup. Ct.

In *Furman*, the Supreme Court articulated diverse views embracing the 8th and 14th Amendments in holding the death penalty to be unconstitutional as applied to three cases under review. While the case was decided on cruel and unusual punishment grounds, the underpinnings of the analysis was of disparate treatment. Mr. Justice Douglas cited The President's Commission on Law Enforcement and Administration of Justice:

Finally there is evidence that the imposition of the death sentence and the exercise of dispensing power by the courts and the executive follow discriminatory patterns. The death sentence is disproportionately imposed and carried out on the poor, the Negro, and members of unpopular groups.

Only limited studies have been conducted. But the Court knew how the penalty was administered almost to the point of taking judicial

notice of the disparate application of the penalty. Such is the case here.

It would be absurd to reach the conclusion that present bail policy does not create identifiable classifications, invidious in character. The facts of the matter are clear, freedom is for sale at a price measured in dollars and cents under circumstances where only Blacks and Hispanics cannot afford to buy it. The constitutional impermissibility is all too apparent. Such a bail system is violative of 14th Amendment notions of equal protection due to the invidious classification.

Dragnet criminal justice techniques beginning with arrests and ending in incarceration without the benefit of conviction may seem to be the right thing for some frightened in a world of escalating crime and drug use. But, for those caught up in the net, it binds much too tightly. It ought to be conceded that a system of pre-trial detention exists here in the State of New Jersey, and that pre-trial detention in the face of a presumption of innocence in its most naked form is offensive if not unconstitutional. Further, the offense is exacerbated when the incarcerating facility suffers from extreme conditions of overcrowding, faulty plumbing, and little or no opportunity for fresh air and exercise.

Conclusion

Yet, the offending bail policy in New Jersey has somehow miraculously overcome the hurdle of due process and continues to grow, apparently immune to challenge. However, add the next constitutional rung of equal protection to the analysis and then even this bail policy ought to crash ignominiously into the dark abyss of constitutional impermissibility.

In the final analysis, the litmus test for pre-trial detention is quite simple when the mechanism of detention is bail. If the population of those accused of criminal activity constitutes a racial mix and those subjected to pre-trial detention do not, resulting in a detainee population that is virtually all Black and Hispanic such a system of bail cannot and should not pass constitutional muster. It is time for a second look at bail policy in New Jersey.

- Notes
- 1 Mayor Dinkins of New York City is the latest in a long line of public officials who has raised this battle cry conceding the point that those pursuing the profit margin of drug sales have become the dominant force in most neighborhoods of our urban areas. In 1988 the then Attorney General of the State of New Jersey responded similarly when he unfolded his plan to combat the proliferation of illegal drug use.
 2. See Federal Bail Reform Act of 1984, 18 U.S.C.A. 3142 Et Seq.
 3. The State Public Defender's records show that 97% of those confronting the criminal justice system on indictable offenses never go to trial.
 4. The difference between these numbers here in the State of New Jersey is due to the absence or inclusion of capital costs. The \$24,000.00 figure only covers the cost of incarceration in an already existing jail facility of one year, while the \$39,000.00 includes the capital costs of building a jail facility.
 5. See, for example, *Morales v. Hudson County*, Docket #C-260280 (Chancery Div.), *Doe v. Johnson*, Docket #C-02779-86 (Middlesex County, Chancery Div. 1986), *Office of Inmate Advocacy v. Fauver*, A-5839-85T6 (App. Div. 1988). (App. Essex County Suit).
 6. R 3:26-1(a).
 7. *Id.* at p. 571.
 8. *Johnson* at 365.
 9. *Id.* at 365.
 10. During the author's last year of tenure as the Public Defender for the State of New Jersey most of the 21 Deputy Public Defenders (managers of a regional office) were polled on this issue and asked for the perceptions of the Staff Attorneys who worked in their offices.
 11. See, e.g., Rankin, *The Effect of Pre-trial Detention*, 39 N.Y.U. Rev. 641 (1964).
 12. Natanson, *Preventive Detention and Presuming Dangerousness Under the Bail Reform Act of 1984*, 134 Univ. of Pa. L.R. 225 (1985).
 13. *Id.*

- 14 Barry Mahoney Report on Essex County Courts
15. See, e.g., Alschuler, *Preventive Pretrial Detention and the Failure of Interest Balancing Approaches to Due Process*, Michigan Law Review, Vol. 85, 48, p. 510, et seq. (1986)
- 16 *Griffin v. Illinois*, 351 U.S. 12, 76 Sup. Ct. 585
17. But see note 12, *infra*, where the effect of pretrial detention is related to a disposition

Chapter Seven

The Black Community and the War on Drugs

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On any given night, one can turn on the television and see low income urban black communities plagued by the public sale of drugs on their streets. A tour through these communities typically includes a look at apartment vestibules lined with crack vials, or interviews with residents who speak of young children killed in the course of drug traffickers' shootouts. As if this is not sufficiently appalling, one hears the accounts of persons who have fallen victim to the power of illegal substances so that both addicted mothers and fathers now abandon their children to be raised by aging grandparents. One sees newborn babies born to mothers addicted to crack cocaine or heroin, who are themselves seemingly addicted. In light of these numerous tragedies, it is not surprising that African-American communities — which are otherwise wary of the police — are demanding a greater police presence and lengthier convictions for those who traffic in these dangerous substances. Small wonder, too, that cries for legalization of drugs lead to condemnation from political leaders in these communities. Indeed, it is argued by some researchers that such low income and minority communities would suffer most if drugs were legalized and by implication, that these areas would benefit most if there were to be even more crackdowns by law enforcement.¹

Introduction

Presumably low income African-Americans would be hardest hit by the legalization of drugs because they are subjected to the dual pressures of poverty and discrimination and, hence, would be most vulnerable to turning to abuse of inexpensive legalized drugs as a form of escape. The increased use of this path to escapism would further limit their chances for social mobility and would serve to depoliticize large numbers of young blacks who might otherwise

actively seek to change the social conditions which undermine the communities. After a while, it is assumed that they would become near 'zombies' with exposure to these substances and thus could be led to accept their poverty. Such a population could be more readily controlled and pacified by a society which may not always be totally committed to eliminating poverty in these areas. Finally, it is argued that legalized drugs would lead to declines in productivity and increased welfare costs.

Before redoubling our efforts to fight the war on drugs, it might be useful to pause and ask ourselves if this is the wisest course. To address this question, it is necessary to know the goals of drug enforcement agents who wage this war and whether or not they have been successful in meeting these goals. It would also be helpful to determine if the war on drugs is truly 'winnable' and to identify the costs incurred by those low income African American communities which are often the sites for the waging of the drug war. These issues will be discussed in the first three sections of this paper. The fourth section will focus on a tentative approach to drug problems which are emphasized more in white communities, and the final section will consider why this nation continues to put so much of its resources into fighting a problem plagued drug war.



The Goals of Drug Enforcement in the War on Drugs

The primary goal of drug enforcement is to reduce the supply of illegal drugs sold on our streets and in so doing to reduce the use of these substances. Reductions in supply result in increases in the cost as the sale of drugs is increasingly confined to fewer dealers who raise their prices as they come to resemble a near monopoly. Supply reductions not only bring price increases but also declines in purity as drug sellers further adulterate their product to stretch limited supplies. It is reasoned, then, that supply reductions will have a desirable impact on regular and addicted users of illegal substances as higher prices will force them to cut back on their use of drugs. Also, more adulterated substances will mean that they actually ingest less drug and adulteration will make these drugs less attractive to them as they will not be able to achieve the same levels of euphoria.

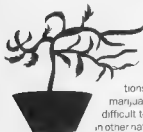
Presumably, in the face of higher prices and increased adulteration, more committed and addicted users will abstain and/or enter treatment. As law enforcement crackdowns limit the number of suppliers of illicit substances, users will be further inconvenienced in their efforts to get drugs. This is especially likely to affect new and

occasional users who will be least familiar with the illicit markets in which drugs are sold and hence may have to expend several hours looking for these substances. If the time required to purchase drugs can be greatly lengthened, then new users will be less likely to repeat this experience on a regular basis and therefore they will be in less danger of escalating to the point of regular or addicted use of these substances.

The arrests of drug sellers would seem to be the most direct way of limiting the number of outlets where drugs are retailed. The very legality of the drug trade also has the effect of limiting outlets by deterring many from entering this lucrative profession because they fear arrest, violence and loss of their standing in the community.

Despite the rosy scenario painted by those advocating continued supply reduction efforts, our past efforts to wage a war on drugs have resulted in almost total failure. In light of these efforts, there is little reason to expect much improvement in the future. To determine why our past attempts have borne so little fruit, it is necessary to assess our efforts at each stage of the drug distribution process, from drug production to drug smuggling to drug dealing to drug sales.

Can the War on Drugs be Won?



The plants from which drugs such as heroin, cocaine and crack cocaine are derived are generally grown in nations with centuries old traditions of cultivating these crops. Marijuana is also grown in other nations although an increasing share of our marijuana supply is grown domestically. It is difficult to halt the growth of these substances in other nations as they may have cultivated these

Drug Production

crops for years in some form for their own medicinal and socially approved euphoric uses. Hence they are unlikely to share our moral outrage at trafficking in these substances since they may regard them in the same way as we regard alcohol, tobacco, caffeine or aspirin. More to the point, their cultivation of these substances for an illicit market destined for the U.S. is likely to provide them with far more profit than could be realized with any other crop. After all, drug traffickers can afford to raise the price they will pay farmers for their crops as this represents such a minuscule portion of their profits. In

fact, the tremendous profits to be realized with crops diverted to the illegal market make it impossible to find a sufficiently competitive cash crop for crop substitution. Hence crop substitution has failed as a strategy for reducing crop production.²

An alternative strategy to reduce production involves surveillance of the fields where these crops are likely to be grown and destruction of any plants found. Unfortunately, the grower nations often lack the manpower or equipment to carry on such surveillance operations. Even when the U.S. provides them with equipment, training and financial support for the necessary personnel, these plants are often grown in vast, remote, unsupervised regions which are not easily monitored. Also, the plants are often mixed with other legal crops making detection more difficult. Thus, little of the crops are actually eradicated by this method. In addition, the police seeking to destroy these crops can be met with violence from farmers or traffickers when they attempt to burn the fields. The police are also frequently bribed by wealthy drug traffickers who see this as a very minor cost of doing business. Indeed traffickers often enjoy the support of local farmers, local police forces, local judges and local guerrilla organizations (both left wing and right wing). Because of this widespread local support, the efforts of police forces sponsored by the central government are made to seem even more intrusive.³ Our past efforts to encourage crop substitution or outright bans on crop production in grower nations have also failed because production has generally been displaced to other nations who rapidly take over the cultivation of these profitable plants.

Drug Smuggling

If the production of drugs cannot be stopped at the source, then it is reasoned that we might stop drugs from being transported across our borders. Unfortunately, our borders are long and porous and the routes by which drugs can be smuggled into the country are seemingly infinite (commercial and private aircraft, ships, cars, trucks, vans, etc.).⁴ Crackdowns at one point of entry simply cause smugglers to select from numerous alternative routes.



The sheer volume of goods and people coming into our country precludes any serious effort to ferret out any sizable proportion of drug contraband. In fact, the search for drugs in the midst of all this commerce resembles nothing more than a search for a needle in a haystack.

stack. Any effort to step up our searches of cargo or of passengers potentially carrying drugs on the river person would hopelessly snarl our legitimate trade and lead to potentially illegal searches of persons entering the country. In fact, major increases in such searches are not like y because the drug war is still accorded significantly lower priority than the orderly flow of commerce. We also lack sufficient personnel to carry out these numerous searches. Finally, customs personnel and drug enforcement agents have been bribed to overlook some smuggling.³

Clearly, stopping the traffic at the source or at the border seems difficult if not impossible. Hence, a large amount of the enforcement effort is aimed at the traffickers and dealers who buy the smuggled product in the U.S., divide it up and adulterate it for sale to drug sellers. Sellers, who often use the drugs they retail and sell to users are also a major focus of the enforcement effort.

Drug Dealing and Drug Selling

Because higher level traffickers and dealers make enormous profits they are willing to take risks and can afford to surround themselves with trustworthy people who actually handle the drugs. Hence, "buy and bust" strategies which involve buying large amounts from major drug traffickers or major drug dealers and arresting them often nets nothing more than low level mules who merely carry the drugs, knowing little about people at the top. What's more, these mules are easily replaced.

"Sell and bust" strategies which require enforcement agents to sell large amounts to major operators and then arrest them are similarly doomed to failure as major traffickers typically do not buy from unknown suppliers. Hence "sell and bust" operations typically net only m m nor dealers or the mules of major traffickers.

While major traffickers easily elude arrest, m m nor dealers and sellers with more direct contact with users are easily arrested. In fact, crackdowns at the retail level can net so many sellers that court dockets and jails are likely to be inundated by the sheer volume of those arrested, processed and convicted. Unfortunately, efforts to save on court costs and precious prison and jail space mean that certain communities can easily be saturated with these low level sellers publicly plying their trade. Hence, local police departments often run a careful balancing act in deciding whether to make token arrests of sellers or conduct full scale raids. Even when the decision is made to arrest all sellers, they are easily replaced by others hoping

to supply themselves with drugs or gain entry into a seemingly profitable profession. The fact that drug enforcement agents and police officers have on occasion gotten into this profitable trade themselves or been bribed to overlook the traffic of certain dealers only makes stopping the traffic at this level even more difficult.

This overview of the problem in enforcing drug prohibition at each stage of distribution suggests that there are major obstacles to waging a successful drug war. Indeed there are many who describe the drug war as "unwinnable" because of these problems. Those who hold that the supply of drugs cannot be significantly reduced can point to reports from drug enforcement agencies and local police forces which suggest that only 10%-15% of drug contraband is actually stopped at the borders.⁶ More distressing are reports from general surveys of high school seniors which show that anywhere from 40%-85% feel that they can get crack-cocaine or marijuana. More to the point, perceived access has not changed or actually increased during the years of greatest investment in supply reduction efforts. In fact, increased efforts at supply reduction were actually accompanied by a decline in the cost of cocaine and a substantial increase in its purity.⁷ Further, marijuana is available in such abundance from both foreign and domestic markets, it is argued that a regular user can support daily use on an annual basis for a little less than a two pack a day cigarette habit. Clearly the war on drugs has not had the desired effect on either the supply or the cost of cocaine or marijuana.

Finally, no supply reduction efforts can get around savvy marketing innovations developed by drug traffickers and dealers. Crack-cocaine was one such successful marketing strategy as it involved the conversion of expensive powder (snortable) cocaine into inexpensive units of smokable crack. Units of crack can be sold for as little as \$5-\$10 in some markets. Its appearance on the market meant that teenagers could afford a euphoria akin to that associated with powder cocaine, which had been far too expensive for this market. Hence, the advent of crack-cocaine meant that dealers greatly expanded their market. Despite the low unit price of crack, its short term effects and its tendency to cause extreme depression in some users means that dealers can still realize huge profits as some users tend towards expensive crack using binges.



While the war on drugs seems unlikely to net us much more than an unimpressive 10-15% of drugs entering the country, perhaps we should continue our efforts despite their token significance. Unfortunately the war on drugs seems ill advised not only because it is ineffective but also because it brings tremendous costs in its wake. This section assesses these costs, particularly those which affect those low income African American communities which are currently most plagued by the drug trade.

The Cost of Fighting an "Unwinnable" War

From the outset it must be noted that the war on drugs has failed most in those low income African American communities where drugs are publicly sold. The numerous drug bazaars are open test many to the failure of law enforcement to limit the number of retail outlets in these areas. Even novice users with little experience with the black market can easily find illicit substances if they live in these areas and because they are little inconvenienced by drug seeking, they have far greater potential to escalate to abusive use of these substances. In addition, those youth who experiment with these substances at an early age and escalate to committed use may feel less pressure to abstain or cut back on use because they can so easily acquire these substances. As long as these open air markets can be contained in low income black neighborhoods, more affluent blacks and whites who live some distance from these markets can be better protected. Hence, those suburban users who stream across the George Washington Bridge into New York City or from Virginia and Maryland into Washington, D.C., are far more inconvenienced by having to shop in an unfamiliar and seemingly dangerous community. Their use of drugs can more easily be limited to the occasional weekend excursion rather than a daily routine. Meanwhile their patronage supports open air markets in these urban communities.⁶

The Community Battlefield

Consistent with the war on drugs mentality, the response to this problem would seem to be more crackdowns on drug seekers and dealers. However, more law enforcement can lead to some untoward effects. Levels of law enforcement actually shape the type of market which exists and more crackdowns tend to encourage a more violent and more professional market. As crackdowns increase, amateur

sellers are driven from the market and the profits increase for the fewer, more professional dealers who remain. These professionals are able to survive more crackdowns because they are better organized, better financed and thus better able to take losses and pay bribes. These professionals are also more likely to resort to violence as they can pay enforcers—unlike amateurs—and they are motivated to use violence to eliminate competitors to assure themselves of a bigger market share. As a more intense police presence erodes the market of amateurs, old and new networks of organized criminals are drawn into the market and begin to ruthlessly eliminate their competition. Certainly much of their violence is directed against others involved in the trade such as competitors, underlings, and users who attempt to rob or con them. However, this violence often spills over into the host communities leading to the deaths or injuries of innocent people who reside in these areas. In addition, because the perpetrators of drug-related violence are often careful in their conduct and given to shutting up witnesses, these crimes rarely end in an arrest. Because many of these crimes go unpunished, drug offenders are spurred on to continued and perhaps even more ruthless acts, thus further undermining the rule of law on the streets of drug-infested neighborhoods.⁹

This has led some to argue that declines in enforcement might actually have some desired effects as levels of violence might be reduced. After a nonviolent amateurs would re-enter the market, the markets would become saturated with sellers and prices and profits would decline as markets moved away from a near monopoly to a more pluralistic structure. Unfortunately a more pluralistic, nonviolent market would make drugs more available as the number of retailers would increase and the prices would decline.¹⁰

Not only does increased enforcement encourage the growth of an organized, professional and violent black market, it also fosters other non-drug crimes. As drug prices rise, committed users are more inclined to initiate or increase their involvement in property crimes to support expensive drug habits.¹¹ Those addicted users who live in

neighborhoods where there are open bazaars may be most inclined to burglarize and rob their neighbors as offenders seldom travel very far to commit most of their crimes. Hence, residents of these drug



infested neighborhoods also suffer disproportionately from these instrumental crimes.

One might reasonably ask why this violent and public drug trafficking so frequently seems to locate in certain low-income urban black communities. Often these communities are unwitting hosts to large pools of petty criminals involved in burglaries, robberies and larcenies. Data on arrestee populations suggest that offenders—both black and white—have very high levels of illicit drug use relative to the general population. Hence, they represent an ideal market for those intent on selling these illicit substances. More importantly, many of those with a history of involvement in property crime are more than willing to convert to drug selling full-time or sell on a part-time basis as the profits to be realized in the recent crack trade have been higher than those to be gained with any other crime.¹³

That disproportionate numbers of low-income black males turn to crime in general and the drug trade in particular is not especially surprising. It has traditionally been argued that unemployment is associated with high crime rates and unemployment levels among young black males have been two to three times as high as those for young white males since 1950. Unemployment and poverty are believed to encourage offending as people turn to crime when they cannot support themselves or achieve status by legitimate employment. Crime in general can seem to pay as much if not more than the menial jobs available to young black males with few skills. The crack trade, in particular, has provided much higher "wages" than legal alternatives, even for those who are only willing to sell part-time.¹⁴ In fact, the profits to be realized with crack may seem even more impressive to youth in their early teens. Hence, juveniles are regularly recruited by adult traffickers who know they will be readily drawn to this profession. Adults may prefer them because the court system is more likely to treat them leniently and because virtually no skills are required.

This situation only adds to the problems faced by neighborhoods already plagued by public drug sales, violence and property crimes. Because the crack trade is so profitable it can offer seemingly attractive career choices to the children of these neighborhoods residents. Hence parents may be forced to extremes in restricting their children's movement around the neighborhood, others may encourage their children's involvement in the traffic as a means of addressing ongoing problems with poverty. Clearly the presence of these markets in the community means that adolescents are provided

with some unsavory "career" choices.

Equal Justice?

Media images of certain African-American communities victimized by drug-related violence and economic crimes, as well as the incentives of public drug sales seem to offer few choices other than increased crackdowns by law enforcement. In this current anti-drug climate, boot camps, longer prison terms, prosecution of crack-addicted pregnant women and even the death penalty for "major" traffickers have all been suggested or partially implemented. However, the use and abuse of illicit substances is by no means confined to black communities; trafficking in illegal substances is also not unique to these neighborhoods.

The 1988 national survey of drug use in households estimates that roughly equal percentages (about 35% of each) of the black, white and Hispanic populations have tried some illegal drug.²³ (Illegal drugs include heroin, nonheroin opiates, powder cocaine, crack cocaine, amphetamines, barbiturates, tranquilizers, hallucinogens and inhalants.) Because no racial subgroup uses drugs disproportionately, this survey shows that 82% of those who have ever tried an illicit substance are white, 11.2% are black (blacks make up about 12% of the population), and 6.8% are Hispanic. Indicators of more recent and more regular use such as use in the last 30 days, show that whites make up 78.9% of those who have ingested illicit in the past month, while blacks make up 12.3% of this population and Hispanics make up 8.7%. Translated into numbers, this means that a total of 72.5 million Americans admitted to ever having tried an illegal drug and 14.5 million had ingested an illicit substance in the past month. Of the 14.5 million who had used in the past month, 11 million had used marijuana, 3 million had used powder cocaine and a meager 500,000 had used crack cocaine. At least some of those who go beyond a single use episode or casual use to regular or 'addictive' use of these substances also sell drugs. Indeed some estimates put users who sell at 10% of the entire user population.

While the number of recent and regular users (past 30 days) number in the millions, there were only 809,000 arrested for drug possessions and drug sales in 1987. Clearly only a handful of regular users and sellers are being arrested. More to the point, 63.2% of those arrested for drug offenses are white although whites make up 78.9% of those who had used in the past month. Blacks make up 36% of those arrested for drug offenses despite the fact that they make up

only 12.3% of those who had used in the last 30 days. These figures are disturbing as they suggest a disproportionate number of black drug users are being arrested.

In part, this discrepancy may have something to do with the types of illegal drugs blacks and whites use. Larger percents of the white population have experimented with inhalants, hallucinogens, stimulants, tranquilizers, and sedatives than is the case for blacks. Roughly equal percents of the black and white populations have experimented with powder (snortable) cocaine and marijuana. Larger percents of the black population have tried heroin and crack than is true for whites, although larger numbers of whites have actually tried these substances. Because heroin and cocaine (especially crack cocaine) are perceived to be the most dangerous drugs, a large share of drug enforcement budgets and resources are geared towards fighting these drugs.

In terms of the threat to health, many pharmacologists would argue that heroin, crack and cocaine may be no more dangerous than stimulants and sedatives. However, heroin, cocaine and crack are more closely associated with professional criminal networks, violent crimes over drug turf and property crimes to support drug habits. Only stimulants (e.g., methamphetamine) seem to bear any similar association to criminal networks (biker gangs, laboratories and crime). This association between heroin, cocaine, crack and criminality is no accident. These drugs offer the highest profit margins and thus attract the most professional and violent criminals. Illicit heroin cost 70 times as much as legal heroin and legal powder cocaine cost 8 times as much as legal cocaine. Because the illegality of these substances creates such profit margins, professional criminals are drawn to the trade. Legalization of these substances would destroy these profits and would mean that they would sell for prices comparable to other illicit drugs (e.g., barbiturates, stimulants, which are diverted from a legal market and more frequently used by whites).

This suggests that blacks may be arrested more because the drugs they use and sell are more likely to be associated with highly visible drug-related violence and property crimes. Blacks may also be arrested more because those who sell seem to be more given to public sales. Understandably, other blacks who reside in these areas are more likely to complain, given these conditions. By contrast, whites who sell heroin, nonheroin opiates, crack, cocaine, speed or PCP seem to be more discreet hence they are not so easily detected as those involved in public sales. The fact that there is little to no profit

associated with certain of the dangerous chemicals which they use and sell (e.g. barbiturates) also means that these markets cannot attract professional and violent criminals. Whites may also benefit from sales in so-called 'protected' environments such as college campuses. Surveys suggest large numbers of college students use illicit drugs and yet few are arrested. Again, students may be discreet and campus police may not investigate or report on suspicious activities on campus. A recent raid conducted at a white fraternity at the University of Virginia was the exception.¹⁶ Certain of the fraternity members were routinely involved in selling and providing drugs to their fellow students at campus parties and a cache of marijuana and hallucinogens was found.

Because illicit drug use and drug sales seem to be a problem in every community, there are those who argue that black users and sellers may be subjected to selective enforcement because of their overrepresentation among arrestees. Whites benefit from less police surveillance and 'protected' environments. They may also be able to hide abuse of these substances as they are likely to have more resources to cover drug habits which get out of hand (wages, credit cards, borrowing or stealing from parents and relatives, etc.) and they can more readily afford very expensive private treatment programs.

This raises questions about how we should address the drug problem. If we continue the current law enforcement approach we are likely to net more conspicuous black sellers and perhaps a so more closely watched black users. Can imprisonment and boot camps effectively discourage drug use and drug sales? Spacing these users on probation likely to be useful? The evidence seems to suggest that these approaches have little effect as levels of drug recidivism are high. They do however bring certain costs. Many blacks involved in drug sales are not involved in other crimes and hence they more closely resemble noncriminal white college students who also sell illegal drugs than they do those who have chosen a life of crime.¹⁷ If these sellers and black noncriminal users disproportionately receive probation or jail time for their drug involvement, then they are more likely to be stigmatized. Even before our most recent war on drugs began anew, as many as 25% of black males in their twenties reported some supervision by the criminal justice system (mostly probation). The stigma of a criminal record can further limit an already disadvantaged population in terms of gaining and sustaining employment and contribute to their ostracism and alienation from conventional society. The fact that this stigma may be applied disproportionately to blacks in the case of drug related offenses is cause for concern.

More to the point, this punitive response may create many of the problems it was supposed to prevent. In other words, those opposed to legal enforcement against drug use and drug sales have been accused of abandoning the black community to high levels of drug abuse because they support legalization and lifting legal controls. It is reasoned that law enforcement is needed because blacks would otherwise be highly susceptible to abuse of cheap legalized substances. Once rendered zombies by their drug use their chances for social mobility would be limited and their willingness to protest their conditions would be eliminated. They could more easily be appeased and controlled. However, if enforcement means that disproportionate numbers of blacks are coming under the supervision of the criminal justice system, it would seem that law enforcement is having the same effect generally associated with legalization. In other words, the chances for social mobility of black users and noncriminal sellers may be limited or foreclosed by their supervision by the criminal justice system. They are also clearly being subjected to more state control in the form of the criminal justice system. Furthermore, those arrested are hardly in a position to protest other negative conditions in the black community as their credibility can be easily undermined because of their criminal records. The fact that black communities already incur numerous other costs from fighting an unwinnable drug war makes the stigmatizing effects of criminal justice supervision seem that much worse.

Much of the foregoing discussion might lead the reader to question whether an escalated war on drugs would be in the best interests of the black community. In fact, given the failures and the costs associated with a war on drugs, there is reason to wonder why the country at large does not begin to consider alternatives. Yet despite its dismal performance, law enforcement continues to get the lion's share of federal drug budgets, while treatment and prevention efforts are only stingily funded. Much state and local money is also poured into the enforcement effort. That this war continues to be waged may have much to do with drug war imagery.

Both print and broadcast media emphasize the drug busts, drug seizures and drug arrests associated with enforcement efforts and these images grossly exaggerate the effectiveness of legal crackdowns. What's more, they lead the public to believe that the drug supply can be eliminated through such efforts. If more money is poured into enforcement and more crackdowns occur

*Why Do We Continue to
Fight an "Unwinnable" and
Costly War?*

Media images which emphasize the association between certain drugs and crime or between drug use and addicted infants also incite the public to pour more support into an unwinnable war which may create and exacerbate these problems. These media efforts can be seen as part of a moral campaign to rekindle anti-drug fever in a public which seemingly had come to tolerate illicit substances in the 1970's. The ongoing moral campaign is but the latest in a series of such efforts to demonize drugs and drug users.

Typically these campaigns focus on the drug use of 'despised and suspect minorities as a way of drumming up antidrug fervor in the majority. Hence, opiates (e.g., opium and heroin), cocaine and marijuana came to be criminalized in the first place as a direct outgrowth of moral campaigns which emphasized and distorted the drug use of blacks, Chinese Americans and Hispanics.¹⁸ These same campaigns ignored or minimized the equally destructive and more prevalent use of the same or similar substance among whites in the same period. Hence, support for cocaine criminalization in 1914 was encouraged by arguing that cocaine-using blacks would be more likely to rebel against white authority and vote white females!¹⁹

Our current campaigns likewise point to the use and criminality of black drug sellers while ignoring or minimizing sales by whites on college campuses. In light of the sheer numbers of whites involved in illicit drug use, our current campaign seems to bear some resemblance to the past. Unfortunately such distortions adversely affect blacks. For example, crack-using, pregnant black women have been arrested and prosecuted for 'delivering' illicit drugs to their fetuses and the public is led to believe that this serves the interests of the mothers and their babies.²⁰ It is highly questionable whether the threat of arrests is likely to make these mothers come in and seek much needed prenatal care. Further, the emphasis on black females using illicit substances means that pregnant white females who use the same or equally harmful legal drugs are not as likely to be subjected to such enforcement. This also raises the issue of moral hypocrisy, since if such policies are meant to protect innocent fetuses, then much, much more could be done by prosecuting pregnant women (both black and white) who routinely use alcohol and cigarettes as these licit drugs figure in far more infant problems and deaths than all of the legal drugs combined. The emphasis on prosecution also deflects our attention from the dearth of low cost public programs for pregnant drug users; that such programs often do not exist means that even motivated drug-using mothers may not be able to get help.

That our current moral campaigns seem to draw attention to black illicit drug use and sales has other effects. Disproportionate numbers of black motorists are stopped on our highways because they fit drug dealer profiles drawn up by police. These searches rarely turn up contraband and lead to potential violations of black motorists' rights to reasonable search and seizure. All of this suggests that there is much reason for the African-American community to re-evaluate the effects and the purposes of the war on drugs.

Conclusion

Notes

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8. Crack is the drug which is probably still most contained in low income, urban black communities, although there is some evidence that these markets have spread discreetly to white communities. Other drugs are also sold discreetly in white urban and suburban communities. See P. Reuter, *Money from Crime*. Santa Monica, Ca: Rand.
9. P. Reuter, *Money from Crime*; M. Kleiman, *Marijuana*, S. Wisotsky, *Breaking the Impasse in the War on Drugs*.
10. Ibid.
11. This assumes inelastic demand which is likely to be true for only a small number of committed and addicted users. This would not be true for the far more numerous experimental and

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16. B.D. Ayres, "11 Held and 3 Fraternities Seized in Drug Raids at U. of Virginia." *New York Times*, March 23, 1991.
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18. J. Helmer, *Drugs and Minority Oppression*, New York: Seabury, 1975; D. Musto, *The American Disease*, New Haven: Yale, 1973; D. Courtwright, *Dark Paradise*, Cambridge, Ma: Harvard, 1982; J. Himmelstein, *The Strange Career of Marijuana*, Westport, Conn: Greenwood, 1983.
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